

*Rhoades vs County Commission of Marion County, et al.*  
*ROOT, DENNIS on 09/17/2019*

STATE OF WEST VIRGINIA  
COUNTY OF CLARKSBURG

IN THE GENERAL COURT OF JUSTICE  
NORTHERN DISTRICT COURT DIVISION  
FILE NO. 1:18-CV-186

CHRISTY J. RHOADES,  
In her capacity as the  
Administratrix and Personal  
Representative of the Estate  
of Philip Jontz Rhoades

Plaintiff,

vs.

COUNTY COMMISSION OF MARION  
COUNTY; DAVID FORSYTH, in  
his official and individual  
capacity and JOHN DOE, in  
his official and individual  
capacity,

Defendants.

DEPOSITION OF

DENNIS ANTHONY ROOT

DEPOSITION OF DENNIS ROOT, a witness called  
on behalf of defendant's counsel before Lisa  
Shepherd-Hollar, Court Reporter and Notary Public, in and  
for the State of North Carolina, at Chamber of Commerce,  
870 W. King Street, Suite A, Boone, North Carolina 28607  
on Tuesday, the 17th day of September, 2019, commencing at  
9:30 a.m.

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A P P E A R A N C E S

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P R O C E E D I N G S

DENNIS ANTHONY ROOT,

having been first duly sworn, was examined and testified

as follows:

DIRECT EXAMINATION

BY MRS. DURST:

Q. Can you state your full name, please.

A. Dennis Root. Last name is spelled R-O-O-T, as  
in tango.

Q. Mr. Root, we met briefly before we went on the  
record. My name is Tiffany Durst. And as I indicated I  
represent the defendants in a lawsuit that is pending in  
West Virginia where you've been identified as an expert on  
behalf of the Estate of Philip Rhoades, you understand  
that?

A. Yes.

Q. I understand from your CV that has been provided  
as part of the disclosure in this case, that you have  
testified in depositions before; true?

A. Yes.

Q. I am not going to go over all of the ground  
rules with you since I assume you are familiar with them  
generally. The one that I would ask is, if I ask a  
question that you don't understand or doesn't make sense  
for some reason, please let me know. My question is not

1 designed to trick you. It may be that maybe I am not  
2 understanding something that we are discussing as part of  
3 your testimony. So if you will do me a favor and ask me  
4 to repeat or restate my question, I will do my best to  
5 make sure that the question is coherent so you can provide  
6 a response to that question, fair enough?

7 A. Yes, ma'am.

8 Q. If you answer the question that I've asked you  
9 without asking for any kind of clarification, I am going  
10 to assume that you've understood the question and rely on  
11 the answer you've given to that question, fair enough?

12 A. Yes.

13 Q. The only other thing is, if you need to take a  
14 break, I don't know how long we will be here today. We  
15 will be here a little while. You can ask to take a break  
16 at any point in time. You don't have to tell me why you  
17 want to take a break. And I will be more than happy to  
18 accommodate the break. The only kind of exception is if I  
19 have a question that I've asked you and you haven't  
20 answered it yet, I would simply ask you to finish  
21 answering the question before we take a break, fair  
22 enough?

23 A. Yes.

24 Q. Did you bring your file with you today?

25 A. I did. And I have for you two thumb drives.

1 And also everything that is on there, I have also, to give  
2 to counsel here. The only thing that is not on those are  
3 the two video files. There is actually multiple video  
4 files of the depositions of Deputy Forsyth and Deputy  
5 Love. The size of those files were massive to put on  
6 there and I just thought that we just got those so  
7 everybody has that. But everything else, every document,  
8 everything I have with me and more is on those.

9 Q. With the exception of the videos of the  
10 deposition transcripts of Deputy Forsyth and Deputy Love,  
11 everything else that you reviewed, relied upon, et cetera  
12 would be on the two flash drives you have provided to me?

13 A. Yes. The transcripts are on there. Just the  
14 videos themselves are not because of their size.

15 Q. Fair enough.

16 Do you have -- when you review a transcript, for  
17 instance, do you make notes or highlights of things as you  
18 are reviewing the transcript?

19 A. Yes. I do a highlight.

20 Q. Are the transcripts that are on the flash drive,  
21 do they contain your highlights?

22 A. No. Highlights don't copy. So the highlights,  
23 like what I have here, provide you with an example, there  
24 is highlight on the page but copying them, I don't make  
25 photocopies of it. So it's just all the documentation

1 there. As far as like hand written notes and things like  
2 that, no it's usually, it's just generally highlights to  
3 speed my way through a hundred page document to answer  
4 questions that counsel may have.

5 Q. Let me make sure I understand. In all of the  
6 documents that you have reviewed in preparation of any  
7 opinions you've given in this case or intend to give in  
8 this case, you don't actually have hand written notes  
9 where you reviewed those documents; true?

10 A. Hand written notes?

11 Q. Yes.

12 A. No.

13 Q. Do you have any typed notes as you go through  
14 and review a document?

15 A. No. Everything consists into the report.  
16 Everything is placed into the report.

17 Q. Now, what you've indicated is, in the binder  
18 that you have brought with you. The deposition  
19 transcripts, at least some deposition transcripts may have  
20 some highlighting. I saw the page you flipped you had a  
21 red star beside the highlight.

22 What I would like to do also, is to see if we can get a  
23 copy, a paper copy of the transcript so I have what you've  
24 highlighted, okay?

25 A. I don't know how you can copy and get the

1 highlight.

2 Q. You can copy highlight.

3 A. You can?

4 Q. You can.

5 A. I haven't had success with that, I guess.

6 Q. If you copy it in color the highlight shows. So  
7 we will need to figure out how to do that. Anything that  
8 you've highlighted that you have at least found somewhat  
9 important enough to highlight it, I would like to have  
10 copies of. So we will need to figure out how to make  
11 arrangements to do that, okay?

12 A. Sure.

13 Q. Did you receive any direction from counsel not  
14 to bring anything with you?

15 A. No. Along that also, I wanted to provide you  
16 with my most current CV.

17 Q. This is updated as of September the 11th. The  
18 one we had was updated May 6th of 2019. We will go  
19 through it. But are you able to kind of tell me generally  
20 what the difference or differences may be between the two  
21 copies?

22 A. I can tell you exactly what they are. One is  
23 new membership with National Sheriff's Association and the  
24 other one was the addition of, I presented a forest  
25 investigations program for the public defender's office in



1 Florida, so that was added to the CV.

2 Q. So a new association or new membership and a  
3 presentation?

4 A. Yes, ma'am.

5 Q. Everything else would be the same on the new CV  
6 and the CV that we had of May 6th of '19?

7 A. Should be identical.

8 Q. We will go ahead and just mark the new CV that  
9 you gave me so I have a copy of it and that way I know the  
10 court reporter will have it so I don't lose it.

11 But for my purposes I may refer to the old one because  
12 I have some markings on some things, I believe.

13 Let's talk about your current employment. The report  
14 that we received in this case has a company that says,  
15 Professional Investigations Training Council, is that your  
16 business?

17 (Exhibit 1 marked and identified)

18 A. Yes.

19 Q. Are you self employed by that business?

20 A. Yes.

21 Q. Does that business also go by another name,  
22 Forest Concepts Training Council?

23 A. Yes.

24 Q. Now, in reviewing some additional material on  
25 you, it looks like in the past you had a business named

1 Dennis Root & Associates?

2 A. Yes.

3 Q. Does Dennis Root & Associates still exist?

4 A. No.

5 Q. When did it cease to exist?

6 A. 2018 I think it was when I closed that down and  
7 opened up my, I guess, it would be considered my part-time  
8 business here in Mountain City, Tennessee.

9 Q. Was Dennis Root & Associates and LLC, a  
10 Corporation?

11 A. Corporation.

12 Q. Was it a Florida corporation?

13 A. Yes.

14 Q. Why did it cease to be in existence?

15 A. I am trying to retire. My wife and I moved to  
16 Tennessee. I stopped doing any kind of professional  
17 investigations. I also had a professional investigations  
18 agency in Florida through Dennis Root & Associates as well  
19 as the consulting in expert witness work. I am trying to  
20 enjoy the later portion of my life in retirement. So  
21 moving up here I continued to stay involved with training.  
22 Teaching investigations and doing the consulting work but  
23 trying to just do that on a much more limited bases than I  
24 was doing when I lived in Florida.

25 Q. So let's talk about, then, the Professional

1 Investigations Training Council. That is a limited  
2 liability company?

3 A. Yes.

4 Q. Is that formed in Tennessee?

5 A. Yes.

6 Q. It was founded in January of '19?

7 A. Yes. I believe so, yes.

8 Q. Is there any member of the LLC other than  
9 yourself?

10 A. No, it is a single member.

11 Q. Now, does Professional Investigations Training  
12 Council, LLC, does it currently conduct private  
13 investigations?

14 A. No.

15 Q. Dennis Root & Associates, did conduct -- you did  
16 conduct private investigations through that company;  
17 correct?

18 A. Yes.

19 Q. You also did expert witness work through that  
20 company?

21 A. Yes.

22 Q. So what you are telling me is, kind of the  
23 private investigative work that was part of Dennis Root &  
24 Associates, you no longer do through Professional  
25 Investigations Training Council?

1 A. Correct.

2 Q. Dennis Root & Associates was formed in 2013?

3 A. 2012, maybe. I would have to look. If you want  
4 I can give you the date out of the CV.

5 Q. Sure. If you would.

6 A. 2012.

7 Q. Now, you said it was a Florida Corporation, what  
8 position did you hold with the corporation?

9 A. President.

10 Q. Were there any other officers?

11 A. I don't recall if at one time I had my brother  
12 running the company for me while I was actually away from  
13 the company. I don't recall if I made him an officer in  
14 the corporation. My wife should be. My wife is almost  
15 always on any business that I've ever had. So Kathryn  
16 Root would have been on there probably as vice president  
17 or something to that affect. I don't know that I ever  
18 named my brother. I don't recall doing that, but it is  
19 possible.

20 Q. So for purposes of the court reporter's benefit,  
21 how does your wife spell Kathryn.

22 A. It's K-A-T-H-R-Y-N.

23 Q. What was your brother's name?

24 A. Richard Root.

25 Q. He did provide at least some assistance in the

1 Dennis Root & Associates but may have not been named as an  
2 officer?

3 A. Correct.

4 Q. Now, did you also at some point have another  
5 business at the same time as Dennis Root & Associates,  
6 Tactical Advantage Solutions?

7 A. Yes. That was the training company I formed  
8 while I was in law enforcement.

9 Q. Was that business incorporated?

10 A. LLC, I believe that one was.

11 Q. Where was it formed?

12 A. Florida.

13 Q. Do you know who the members were of that LLC?

14 A. That, I believe, was myself and my wife Kathryn.

15 Q. Now, as part of the training that was provided,  
16 did you provide training only to law enforcement officers  
17 or did you provide training to others outside the law  
18 enforcement field?

19 A. Both. I provided training a few times with the  
20 Army. I did training with law enforcement. And I also  
21 did training in the private sector for individuals.

22 Q. As part of that business, where you provided  
23 training to law enforcement agencies, at any point in time  
24 have you provided training to any law enforcement agency  
25 in West Virginia?

1           A.    I did not contract with anybody out of West  
2   Virginia, but I can't say specifically if a West Virginia  
3   officer ever attended the training. Because I had  
4   officers that would come from across the united states to  
5   different classes. But not specifically like going to a  
6   law enforcement agency in West Virginia or holding a class  
7   specifically in West Virginia.

8           Q.    Just to be clear then, you can't say because you  
9   may not know where a specific officer may have been from  
10   who attended your training. It could have been somebody  
11   from West Virginia, maybe, maybe not, but you've never  
12   actually went to West Virginia to provide training for any  
13   specific law enforcement agency or officers, is that fair?

14          A.    Yes.

15          Q.    Have you ever been requested to go to West  
16   Virginia to provide any training?

17          A.    No.

18          Q.    So at the time that you were initially contacted  
19   in this case, has all of your work been through  
20   Professional Investigations Training Council or was any  
21   work done through Dennis Root & Associates?

22          A.    I believe I was originally contacted when I had  
23   Dennis Root & Associates. When I closed the business down  
24   and transitioned to Tennessee we transitioned it to  
25   Professional Investigations Training Council. But we

1 honored the original service agreement that was formed  
2 with Dennis Root & Associates.

3 Q. With regard to Dennis Root & Associates, and you  
4 said that was a corporation, how were you compensated?

5 A. For?

6 Q. For compensation you received for work performed  
7 on behalf of Dennis Root & Associates, how were you  
8 compensated? Meaning did you have a set salary? Did you  
9 just take money, like a distribution if there was a  
10 profit? I mean, tell me how you were compensated through  
11 Dennis Root & Associates.

12 A. I received paychecks. It was based on the type  
13 of work being conducted and the time that I put in. Just  
14 like all of my other team members.

15 Q. Did you have to turn in, like, time sheets?

16 A. Well, I kept the time sheets, so I maintained my  
17 own hours. So I knew what to pay myself for.

18 Q. With regard to Professional Investigations  
19 Training Council, how were you compensated?

20 A. With the new LLC as a single member, it's just  
21 monies flow in, they take care of the business  
22 expenditures. It was actually formed specifically because  
23 I was retiring and reducing my work load so that it will  
24 come off my standard income, not have to file any special  
25 documentation with the IRS or anything like that for

1 reporting taxes. It's just, I reserve the taxes that need  
2 to be paid on whatever and it comes out of those funds.

3 Q. With regard so, since kind of, Dennis Root &  
4 Associates cease to be in existence in 2018. And then you  
5 transitioned to Professional Investigations Training  
6 Council, do you know what your income was for 2018 for  
7 expert witness work?

8 A. The dollar figure?

9 Q. Yes.

10 A. Not off the top of my head, I do not.

11 Q. Do you have any idea? Are we talking twenty  
12 thousand, fifty thousand?

13 A. I don't want to guess. I would have to research  
14 that.

15 Q. Were you still doing the training through  
16 Tactical Advantage Solutions as well up until Dennis Root  
17 & Associate ceased to exist?

18 A. No. Tactical Advantage Solutions closed down  
19 and the training that I conducted with Dennis Root &  
20 Associates was put under Dennis Root & Associates.

21 Q. When did Tactical Advantage Solutions close?

22 A. If I can refer to my CV, I can get the exact  
23 date.

24 Q. Sure.

25 A. I don't recall. That would have been 2014.



1 Q. So from 2014 up through 2018, any compensation  
2 received for training provided would have been  
3 compensation also just through Dennis Root & Associates?

4 A. Yes.

5 Q. Do you know in 2019 we are in September, mid  
6 September of 2019 and Professional Investigations Training  
7 Council has been around since the beginning of the year,  
8 do you know how much money you have earned thus far  
9 through expert witness work?

10 A. Through today, I would have to look at the  
11 financial. I am not sure.

12 Q. I will tell you, excuse me. So you have no idea  
13 as of today, like, whether it's ten thousand, fifteen  
14 thousand, no idea what so ever?

15 A. Well, I could guess, but I don't like to guess.

16 Q. Can you give me an estimate understanding that  
17 it is only an estimate?

18 A. For this year twenty, twenty-five, maybe.

19 Q. I understand that is just an estimate. Is that  
20 the only source of income that you currently have?

21 A. No.

22 Q. What other source of income do you have?

23 A. Retirement income. And then the training income  
24 that comes through for the classes that I perform.

25 Q. Does the twenty to twenty-five estimate that you

1 gave me, that just includes the kind of expert witness  
2 work you are doing here in this case, doesn't include  
3 income from the training that you provide?

4 A. Correct.

5 Q. Did you work at some point in time for a company  
6 called Milano Investigations?

7 A. Yes.

8 Q. When did you work for Milano Investigations?

9 A. I want to say 2012.

10 Q. Where was Milano Investigations located?

11 A. Stuart, Florida.

12 Q. What did you do for them?

13 A. Professional investigations.

14 Q. Tell me what you are kind of generally referring  
15 to when you are talking about professional investigations.  
16 What kind of investigative work?

17 A. For Milano Investigations it was criminal  
18 defense work.

19 Q. How were you providing services through Milano  
20 Investigations, meaning, were you an employee, were you an  
21 independent contractor?

22 A. I thought I was an employee but I learned that  
23 as I was being compensated I was actually a subcontractor.  
24 Which is some of the reasons that I separated from them  
25 because that is not legal. You can't do that. It's not

1 permissible for an individual to subcontract work to an  
2 agency. And unfortunately when I initially researched it  
3 with the State of Florida Department of Agriculture the  
4 representative said, oh they have a work around. Well,  
5 the more I dug into it, and once I get a wild hair in my  
6 ear I don't stop. I learned that no, there is no such  
7 work around. And that led to our separation.

8 Q. How long were you with them?

9 A. Not very long. Months. I don't know the exact  
10 amount of time.

11 Q. So any work you would have performed for them  
12 would have only been in the 2012 calendar year?

13 A. I believe so. Maybe the end of 2011 to the  
14 beginning of 2012, I believe. But I am not really  
15 certain. I actually forgot all about them.

16 Q. I noticed they weren't on your CV, is it --

17 A. Just a personal mistake. I was there for a very  
18 short period of time. And it wasn't a full-time position.  
19 And I actually just completely forgot about them.

20 Q. Is it, based on your CV, fair to say that you've  
21 never worked as a law enforcement officer in West  
22 Virginia?

23 A. Yes.

24 Q. Now, with regard to your law enforcement  
25 employment, you started off with the Riviera Beach Police

1 Department. It looks like you had two different stints  
2 there?

3 A. Yes.

4 Q. Tell me what you did at Riviera Beach Police  
5 Department. I mean, just generally what kind of work you  
6 were doing?

7 A. Road patrol duties. Also, I was the designated  
8 shift traffic unit as well in addition to road patrol  
9 duties. I also served as a field training officer for  
10 teaching new hired law enforcement personnel and training  
11 them in how to do their jobs. I, in addition to those  
12 duties, had duties as a trainer for the agency. I became  
13 the lead defense of tactics instructor and also the impact  
14 weapons instructor for the police department.

15 I developed the DUI training program for their road  
16 patrol and taught that program as well.

17 Q. Was the employment with Riviera Beach Police  
18 Department your first entry to the law enforcement field?

19 A. Oh, yes.

20 Q. One of the things you said you did while with  
21 Riviera Beach Police Department was you served as the FTO  
22 or the Field Training Officer for new hires?

23 A. Yes.

24 Q. Similar to the way that Deputy Parker, in this  
25 case, was the FTO for Deputy Love?

1 A. Yes. I would imagine they would be comparable.

2 Q. When you were with Riviera Beach Police  
3 Department did the police department hire individuals who  
4 may have not been through any kind of academy training  
5 yet?

6 A. As far as putting them on the road?

7 Q. Yes.

8 A. No.

9 Q. Did they hire individuals who had not been  
10 through the academy?

11 A. Yes. I was hired without going to the academy.

12 Q. What kind of duties did you do before you went  
13 to the academy?

14 A. Depending on when the academy started. They  
15 would either try to coordinate your hire date for when an  
16 academy began or if it was going to be three weeks, a  
17 month, whatever, they would bring in new hires and they  
18 would be doing some time, like, with criminal  
19 investigation division doing file clerk work or mundane  
20 tasks. Helping out in records. Generally the agency  
21 hired and coordinated the academy based on hire dates.  
22 Because the academies down there ran on a very specific  
23 schedule.

24 Q. There were a number of academies available to  
25 new hires; correct? I mean, it wasn't only, like, in West

1 Virginia that you had the West Virginia State Police  
2 Academy?

3 A. No, ma'am. There's academies across the entire  
4 state of Florida.

5 Q. So it may have been easier to get a new hire in  
6 for a police department to an academy as opposed to if  
7 there is only one choice?

8 A. I would imagine so.

9 Q. Why did you leave the Riviera Beach Police  
10 Department on the first occasion?

11 A. I always wanted to work for a sheriff's office  
12 and more importantly in Martin County. That is where I  
13 grew up as a kid and where I wanted to return to live as  
14 an adult. I was offered a position for road patrol in  
15 Martin County Sheriff's Office so I took that opportunity.

16 Q. So you were at Riviera Beach Police Department  
17 from '89 to '91. Then Martin County Sheriff's Office from  
18 '91 to '92?

19 A. Yes.

20 Q. Then went back to the Riviera Beach Police  
21 Department from '92 to '93?

22 A. Yes.

23 Q. Tell me, you said you had always kind of wanted  
24 to work for the sheriff's department, why did you only  
25 stay for a year the first time and then leave?

1 A. Boredom.

2 Q. What do you mean boredom?

3 A. When you are young in a career and you work for  
4 a city like Riviera Beach -- to give you an idea, Riviera  
5 Beach at the time that I worked there was rated crime per  
6 capita with Miami and New York. Very active. Very busy  
7 place. Tremendous training ground for law enforcement  
8 officers. When you work a shift that is 30, 40 calls a  
9 shift you develop an energy level that when you go to an  
10 agency that is on 12 hour shifts and the maximum calls you  
11 get is 10, when you work all night long, it was just  
12 fatiguing beyond belief. And I wanted to go back to where  
13 I felt like I was really doing something.

14 Q. So you didn't feel like it was active enough for  
15 you?

16 A. It wasn't active enough. I didn't like the 12  
17 hour shifts. They were very long shifts for constant. I  
18 mean, it is not like a 12 hour shift where you pulled  
19 something for overtime, it was 12 hours a day all the  
20 time. And under that current administration, it was back  
21 under Sheriff Holt, there was no such thing as overtime.  
22 If there was an escape prisoner, for example, you stayed  
23 out until he was recovered and you didn't get paid for it.  
24 That is the way the sheriff's office ran.

25 So looking at the hours and the lack of activity, it

1 was just a decision that I made that I preferred to go  
2 back to a place that presented law enforcement in a way  
3 that I first cut my teeth on. That is how I envisioned  
4 law enforcement to be.

5 Q. While you were with the Riviera Beach Police  
6 Department the first occasion, were you ever disciplined  
7 or reprimanded for anything?

8 A. Not that I can recall.

9 Q. Your departure from the Riviera Beach Police  
10 Department in '91 was a voluntary decision?

11 A. Yes.

12 Q. Then you went to Martin County Sheriff's  
13 Department, were there for a year, were you reprimanded  
14 while you were with the Martin County Sheriff's Department  
15 that year?

16 A. No.

17 Q. That was a voluntary decision on your part to  
18 leave there and to go back to the Riviera Beach Police  
19 Department?

20 A. Yes.

21 Q. Then you stayed there at Riviera Beach Police  
22 Department for another year?

23 A. Proximately.

24 Q. Well, at least it's in '92 to '93?

25 A. Right.



1 Q. Were you doing the second stint at Riviera Beach  
2 Police Department, were you doing the same kind of work?

3 A. Yes.

4 Q. Why did you leave if that is where you -- it was  
5 more active, you were staying busier, why did you leave  
6 there in '93 and go to Jupiter Police Department?

7 A. Part of the reason that I left, we lost Chief  
8 Fitzgerald. He was our police chief. He went to become  
9 the chief of Palm Beach Gardens Police Department. A new  
10 administration came in who had a very different outlook on  
11 the manner in which things were going to be done in the  
12 agency.

13 The Jupiter Police Department, at the time I was going  
14 to classes and I met a captain from the Jupiter Police  
15 Department who recruited me to the agency for the purpose  
16 of -- originally it was for road patrol, but then also to  
17 act and take a position as the lead defense of tactics  
18 instructor for the agency. Is what he recruited me for.

19 Q. So part of the change in administration was part  
20 of it?

21 A. It is. And as a younger officer, if you will, I  
22 am not very politically correct. I am the type of person  
23 that is out spoken. And if I am right I stand firm in  
24 what I think. I just didn't see that as being a positive  
25 thing there. Being offered the opportunity with Jupiter

1 was actually a significant pay raise. It was a very  
2 promising agency. They had tremendous growth coming in.  
3 It really had the potential to be a tremendous  
4 opportunity.

5 Q. Was the type of work you were doing with Jupiter  
6 Police Department generally the same type of work you were  
7 doing when you were with Riviera Beach Police Department?

8 A. Yes. Road patrol duties and teaching defensive  
9 tactics. But I wasn't an FTO in Jupiter.

10 Q. So you weren't a field training officer in --  
11 okay.

12 I had seen and I was looking for it and I couldn't  
13 place my finger on it quickly. I had seen a reference in  
14 your CV that there was a reference that you were with Palm  
15 Shores Police Department?

16 A. Palm Beach Shores Police Department.

17 Q. Palm Beach, okay. When were you with Palm Beach  
18 Shores Police Department?

19 A. That was the most recent before I left Florida.  
20 That would have been 2015 to 2017.

21 Q. Okay, there it is.

22 A. As a part-time person, not a full-time officer.

23 Q. So after you had about four years in between  
24 when you left Martin County Sheriff's Department and then  
25 kind of rejoined, so to speak, the law enforcement field

1 on a part-time basis?

2 A. Yes.

3 Q. Now, you were with Palm Beach Shores, there was  
4 a reference to director of internal affairs, did you have  
5 involvement in investigating any officer involved  
6 shootings while you were with Palm Beach Shores?

7 A. No. There were no officer involved shootings  
8 there at that time.

9 Q. Now, Jupiter Police Department, I think you were  
10 there even less than a year; is that right? It wasn't  
11 quite a full year?

12 A. Correct.

13 Q. You actually kind of left the law enforcement  
14 field for a period of time?

15 A. Yes.

16 Q. Why did you leave the law enforcement field?

17 A. My experience with the Jupiter Police  
18 Department, the short version, they were an agency that  
19 shift bids were based on seniority. And similar in  
20 Riviera Beach, but I never had to do anything other than a  
21 three to eleven shift because all the senior guys in the  
22 agency they wanted to be on midnights when things slowed  
23 down or they wanted to be on day shift. So I spent the  
24 majority of my career working three to eleven.

25 When I went to the Jupiter Police Department I was put

1 on midnights. I began to have a lot of problems on  
2 midnights, emotionally and just high stress. Very unusual  
3 emotional feelings. So I went to my lieutenant and said,  
4 I am having some difficulties. So through the Ap and  
5 everything, long story short, I learned that I have, I  
6 can't remember what they call it. There is a medical  
7 condition where I can't reverse my body clock. I can't  
8 get my clock to adjust. So working midnights meant no  
9 sleep at night. I was fearful that I was going to be  
10 terminated because I am on probation and now I can't work  
11 midnight shift. The agency made the decision to move me  
12 to the four to twelve shift. Created a tremendous amount  
13 of turmoil, if you will. Cause now here is the guy that  
14 just came in took over defensive tactics and lead  
15 instructor and now he is being moved ahead of all the  
16 other senior people to a four to twelve shift. And rather  
17 than having a team environment it became very adversarial.  
18 Not something that I enjoyed. And thought, man, this is,  
19 at first I had the administration taking bad spots, and  
20 then I have -- now I look back, it's kind of unfortunate  
21 but a situation had created where I was just not happy.  
22 And I thought, well, you know what, I am going to try and  
23 just -- maybe this isn't the career for me. Maybe that is  
24 the way it is.

25 Q. When you were going through those issues with

1 Jupiter Police Department did you apply at any other law  
2 enforcement agency to see if maybe it would be better at  
3 another agency or was your decision at that point you  
4 didn't want to be in law enforcement?

5 A. My decision at that point was, I believe, it was  
6 just to transition away. I had thought of one of my  
7 passions because defensive tactics became physical  
8 therapy. So I wanted to go to school and a credible  
9 opportunity had presented itself with Pinkerton to be  
10 their human resource person. And I just thought well,  
11 maybe a change of profession would be appropriate.

12 Q. Up until the point that you left Jupiter and  
13 went to Pinkerton Security Services, so while you had your  
14 two stints with Riviera Beach Police Department, the one  
15 stint at that point with Martin County Sheriff's  
16 Department and then Jupiter, had you been disciplined or  
17 reprimanded for anything in your law enforcement field?

18 A. Not that I can recall. I might have had a  
19 traffic crash that I was at fault for. But not as far as  
20 discipline for behavioral actions of activities.

21 Q. So tell me while you were with Pinkerton  
22 Security Services were you doing any kind of investigative  
23 work? You mentioned human resources, so were you kind of  
24 the HR person or were you actually doing investigative  
25 work?

1           A.    No, I was the HR person. I did the backgrounds  
2   on the applicants. I ran the psychological exams. I did  
3   the behind the scenes work getting people hired by the  
4   agency.

5           Q.    So you did that for two years or so maybe a  
6   little bit less because we just have the years and no  
7   months. Why did you leave Pinkerton Security Services and  
8   then go back to Martin County Sheriff's Office?

9           A.    I was recruited back to the sheriff's office.  
10   They were running a juvenile defender training center. A  
11   boot camp for youth. And one of my family friends who was  
12   working in there at the time contacted me and said that  
13   they were looking for law enforcement personnel to come in  
14   and participate in the program. Being intrigued by the  
15   opportunity I talked to them. I went there and toured.  
16   Thought, man, what a great opportunity to work with kids.  
17   And so I took the offer. Went through the process and got  
18   hired on. Went back to Martin County Sheriff's Office in  
19   law enforcement and was assigned to the juvenile defender  
20   training center.

21          Q.    At some point during your second stint with  
22   Martin County Sheriff's Department did you kind of leave  
23   that juvenile program and then go back to road patrol?

24          A.    Yes. When I was in the Juvenile Defender  
25   Training Center we were under law enforcement. So it was

1 Major Forchette and my captain. While I was there I  
2 became one of their instructors for defensive tactics and  
3 open hand control techniques for the agencies personnel.  
4 I also tested for and got promoted to sergeant. And it  
5 was after Major Forchette left that the agency reorganized  
6 the boot camp and then placed it up underneath  
7 corrections. I have never been corrections certified.  
8 Wanted an opportunity to go back because I was missing  
9 road patrol and traffic and things like that. So I  
10 requested to be transferred back over to law enforcement  
11 to road patrol and they agreed. The only caveat was you  
12 had to give up your stripes if you are going to go back to  
13 road patrol.

14 Q. So while you were on the law enforcement side  
15 with Martin County Sheriff's Department your highest rank  
16 would have been deputy?

17 A. No. Sergeant. I got promoted to Sergeant while  
18 in law enforcement assigned to the juvenile defender  
19 training center. They transitioned it to corrections.  
20 That was a bone of contention also because when they were  
21 telling me that going back to the road meant giving up  
22 stripes, I said no, I tested for and got my stripes here.  
23 They said, no you are in corrections. I said, no I am in  
24 law enforcement you guys moved it under corrections.  
25 Well, it's corrections position for sergeant. There

1 aren't any sergeant positions in law enforcement so if you  
2 want to come back you got to give them up. At the time I  
3 thought I earned them once, I won't have any trouble  
4 earning them again. So I relinquished them and returned  
5 to law enforcement.

6 Q. But when you retired you were only a deputy;  
7 correct?

8 A. That is correct.

9 Q. After you returned from the juvenile services  
10 program back to road patrol and had to give up your  
11 sergeant stripes, you applied for promotions throughout  
12 the rest of your career; correct?

13 A. I was always on the list.

14 Q. But you were never promoted to sergeant at any  
15 point in time thereafter?

16 A. Correct.

17 Q. Do you know why?

18 A. Sure.

19 Q. Why?

20 A. Because I am not politically correct.

21 Q. Did you score high enough on the test?

22 A. I was the first person to make a hundred on the  
23 written exam for sergeant.

24 Q. Was that while you were still with juvenile  
25 services or when you were back on road patrol?



1           A.     That was on road patrol.

2           Q.     Even though you had scored that high on the  
3 test, you were never given the opportunity for the  
4 promotion to sergeant?

5           A.     That is correct.

6           Q.     Why did you leave the law enforcement field in  
7 2011?

8           A.     By then I had experienced just about everything  
9 there is to do through the sheriff's office and law  
10 enforcement. And the sheriff at the time, Sheriff  
11 Crowder, was offering retirement buyouts for anyone with  
12 15 years or more in service and who are interested in  
13 early retirement. Seeing that opportunity, and I had  
14 already started a training business, and I thought, man,  
15 this is the perfect opportunity. So I thought it was kind  
16 of a message from God that here is an opportunity for you  
17 to retire and to do what you do as a part-time thing  
18 full-time.

19          Q.     Before you left law enforcement in 2011, in any  
20 of the law enforcement agencies that you were with,  
21 Riviere Beach, Jupiter, Martin County Sheriff's  
22 Department, were you the subject of any internal affairs  
23 investigation regarding any kind of use of force issues?

24          A.     Not that I can recall. I am trying to think of  
25 Martin County, that's my longest period. I don't recall.

1 I know I had a traffic crash in Martin County. And I got  
2 a written reprimand for that. I am trying -- I don't  
3 think I was ever the subject -- oh, wait a minute. Yes I  
4 was. There was a complaint, oh my goodness, what was his  
5 name. There was a complaint filed against me by a young  
6 man. And actually I think there was a civil suit.

7 Mechata. I think his last name was Mechata. And he was  
8 somebody that I had stopped for possibly being DUI. And  
9 unfortunately other deputies took over my traffic stop,  
10 slammed him to the ground, did some very inappropriate  
11 things and I immediately reported it to my supervisor.  
12 Took the recording of it, provided it to him. And when  
13 the complaint came in I had video showing exactly what  
14 happened. And I was cleared. The reason I wasn't  
15 exonerated is one of the allegations was when I went to  
16 put him in the patrol car, he alleged that I tightened his  
17 handcuffs down around his wrists. No such thing ever  
18 happened. But because I couldn't prove I didn't and he  
19 couldn't prove I did, it was just unsubstantiated instead  
20 of exonerated. But as far as the other things that  
21 happened to him I was, clearly by video, exonerated from  
22 those allegations.

23 Q. So as far as you can recall, that is the only  
24 kind of use of force allegation or inappropriate use of  
25 force allegation against you during your career as a law

1 enforcement officer?

2 A. To the best of my recollection.

3 Q. You mentioned that there may have actually been  
4 a civil lawsuit filed by Mr. Mechata as a result of the  
5 incident that occurred?

6 A. Yes.

7 Q. Were you named as a party?

8 A. I don't know. I don't think so. But I can't  
9 recall. I never saw any of that kind of paperwork that  
10 came through. I know that I never went to any kind of  
11 deposition or anything like that for the matter.

12 Q. Aside from the incident involving Mr. Mechata,  
13 are you aware of any other claim or lawsuit brought  
14 against you or any department because of your alleged  
15 conduct? Other than the Mr. Mechata claim?

16 A. No.

17 Q. I want to make sure, my question sometimes the  
18 way I ask it, it may not be the clearest. No you are not  
19 aware or no there are none? You understand what I am  
20 saying? I just want to make sure you and I are on the  
21 same page.

22 A. I'm not aware of any such issues.

23 Q. Is it true during your years as a law  
24 enforcement officer you never had to discharge your  
25 firearm in the course of your duties?

1           A.     Thank God, that is true. Outside of terminating  
2     an animal.

3           Q.     Were there incidents while you were with one of  
4     the law enforcement agencies that you were employed by  
5     where maybe you weren't the one who had to discharge a  
6     weapon but another law enforcement officer was put in a  
7     situation where he or she discharged their weapon?

8           A.     Where I was on scene?

9           Q.     Yes.

10          A.     Yes.

11          Q.     Which law enforcement agency were you with?

12          A.     I know for a fact it happened in Riviera Beach.

13          Q.     What happened?

14          A.     We had an armed subject in a bar. We were  
15     making entry into the bar. We stacked up at the door and  
16     the first two officers in the door were confronted and  
17     engaged. I was at the door but I was not a participant in  
18     the actual shooting.

19          Q.     So there was an armed subject in the bar?

20          A.     Yes.

21          Q.     Did that subject move towards one or more of  
22     those police officers with the weapon in hand?

23          A.     Yes.

24          Q.     Was there any kind of physical contact between  
25     the subject and one or more of those officers?

1 A. Prior to the shooting?

2 Q. Yes, prior to the shooting?

3 A. No. No, he presented the weapon and it was  
4 dealt with immediately.

5 Q. So just the threat of a weapon was presented and  
6 the police officer used that -- he used force?

7 A. Deadly force.

8 Q. Was there any kind of investigation done by  
9 either Riviera Beach Police Department or any other agency  
10 to investigate that shooting?

11 A. Oh, yes.

12 Q. Were you involved in any manner in the  
13 investigation?

14 A. As conducting it?

15 Q. Yes.

16 A. Oh, no.

17 Q. Were you interviewed?

18 A. Yes.

19 Q. Did you actually, I know you weren't directly  
20 involved in the incident with the subject, but did you  
21 witness what occurred?

22 A. Yes.

23 Q. Were you interviewed and asked whether you  
24 believed that the police officer who had fired his weapon  
25 had acted appropriately?

1 A. I don't recall being asked that question.

2 Q. Is there any other incident that you can recall  
3 while you were with law enforcement where another officer  
4 was in a situation where he or she discharged their  
5 weapon? And again, I am not talking about having to put  
6 down a wounded animal or something like that.

7 A. I understand.

8 I have been involved in a lot of shooting cases and  
9 seen examinations. I am trying to separate my memory from  
10 whether I was there post event and putting myself there.  
11 Off the top of my head I can't think of another incident  
12 in which I was physically on scene at the time the  
13 discharge took place.

14 Q. Now, one of the things you had said was trying  
15 to separate out your memories of whether you were present  
16 when a shooting occurred or maybe some kind of  
17 investigation you were doing. Did you investigate officer  
18 involved shootings at any one of your law enforcement  
19 agency positions?

20 A. Yes.

21 Q. Tell me, what reason were you investigating?  
22 Meaning, were you investigating to determine whether the  
23 police officer used reasonable force or were you  
24 investigating it for another reason within the agency?

25 A. With Martin County I was the designated use of

1 force specialist. I was the resident expert for force  
2 related events.

3 I would, for example, in one case there was an officer  
4 involved shooting which I was called out to do a scene  
5 examination immediately following it. And my primary job  
6 was to evaluate and assess the application of force and  
7 answer any questions for the investigators. Also the  
8 weapon systems that were applied, sometimes it was  
9 technical questions about the weapon. Sometimes it was to  
10 answer questions about whether or not the individual's use  
11 of that particular weapon, given the circumstances, would  
12 be considered objectively reasonable. So my participation  
13 was to help the investigators understand the force  
14 evolution, the weapon systems and also to say whether or  
15 not we had a training issue or if we had a potential  
16 policy issue that would then also -- internal affairs  
17 would take and run with anything along those lines.

18 Q. You weren't the one who made the determination  
19 as to whether the police officer's use of force was  
20 objectively reasonable or not? Am I understanding you  
21 correct?

22 A. There is command staff that makes that  
23 determination. There is, and generally, usually the  
24 document that is signed will only be signed by either the  
25 colonel or the sheriff. The input is sought from the

1 people that let them know, well, here is everything that  
2 happened. And here is why this was this way. So that  
3 they could make the final decision.

4 Q. Were you ever a member of any kind of police  
5 review board that actually made the decision whether a  
6 police officer's use of force was objectively reasonable?

7 A. I have never been on a police review board.

8 Q. Have you ever been a member, maybe it's not  
9 called a police review board, have you ever been a member  
10 of any group or organization within a law enforcement  
11 agency where you were part of the team, group, whatever,  
12 that made the decision as to whether a police officer's  
13 use of force was objectively reasonable?

14 A. Yes. A shoot team. That's what I'm saying,  
15 it's all the information the team correlates all the  
16 information and makes a recommendation or voices the  
17 position to the command staff and they make the final  
18 determination and they write up the documents and things  
19 like that.

20 Q. Maybe we are kind of having a bit of a  
21 disconnect. I think I understand what you are telling me.  
22 That you might be one of the folks that are providing  
23 information that is used in the determination. My  
24 question is, have you ever been a member of the group that  
25 is actually the one making the decision as to whether the



1 use of force was objectively reasonable?

2 A. It's not a group. In the sheriff's office it  
3 was an individual. It was a command staff individual.  
4 Whether it was the designated captain or the colonel, the  
5 individual made the final -- it was the group that said  
6 here is the information. You know, I get pulled into a  
7 meeting, here is what we've got. What do you think. I  
8 provide them with the information. They make the final  
9 determination. There is not a line staff personnel  
10 outside of command staff that would articulate whether or  
11 not something was within the final decision being  
12 objectively reasonable. That is the sheriff or the  
13 colonel's final.

14 Q. Was that the same kind of make up in all the law  
15 enforcement agencies you were with?

16 A. No. Each agency has different approaches to how  
17 they perform. Some agencies don't even have shoot teams.  
18 They don't, you know, some agencies rely on outside  
19 entities to conduct all their officer involved shooting  
20 investigations. And then you also have the comparisons of  
21 whether it's a police department or a sheriff's office,  
22 because they operate very differently as well.

23 Q. The investigation where you were interviewed for  
24 the shooting that occurred while you were with Riviera  
25 Beach, did Riviera Beach Police Department investigate

1 that shooting themselves or did they have an outside  
2 agency investigate it?

3 A. I believe it was the sheriff's office that  
4 actually conducted the investigation. If I recall  
5 correctly. That was a long time ago. But I believe,  
6 especially an officer involved shooting where a subject  
7 was injured they called in the sheriff's office. Because  
8 we had a very strong working relationship with the  
9 sheriff's office and I believe it was the Palm Beach  
10 County Sheriff's Office that did that investigation.

11 Q. So you retired in 2011. Did your investigative  
12 work, the training work and then you went back to Palm  
13 Beach Shores on a part-time basis. What made you decide  
14 to go back into law enforcement even on a part-time basis?

15 A. I wanted to maintain my law enforcement  
16 credential. Once you are certified you have to maintain  
17 educational requirements and then you also have to be  
18 connected to a law enforcement agency to renew your  
19 certification. It is not like it used to be a long, long  
20 time ago where you got certified and you were just  
21 certified for a period and that was it. Now they added  
22 additional criteria to maintain your law enforcement  
23 certification.

24 Q. Since you were out of law enforcement for three  
25 to four years, was there a period of time where you were

1 not certified?

2 A. No.

3 Q. So you managed to keep the certification. Is  
4 that one of the reasons you went to Palm Beach Shores in  
5 2015 then? Was your certification close to running out,  
6 expiring, whatever you want to call it?

7 A. I'm sure at that point it was close to expiring.  
8 And also I was going to be running for sheriff and I  
9 wanted to make sure that I was as current as I could be  
10 with being up to date on the challenges law enforcement  
11 agencies face as a whole. And I was offered an  
12 opportunity with the town of Palm Beach Shores that turned  
13 into a tremendous opportunity because I eventually was  
14 named as a part-time person. Cause it is a very small  
15 agency. Very small agency. Was eventually named the  
16 director of training in internal affairs. And it helped  
17 me maintain my credential. And at the time, I believe it  
18 was in 2015, I was also, or '16 I was running for Martin  
19 County Sheriff.

20 Q. I am assuming you lost the election?

21 A. I did not win.

22 Q. Have you ran for any kind of elected office  
23 other than running for Martin County Sheriff?

24 A. No. That was the only experience I really  
25 needed to know that ethics are not a part of politics.

1 Q. There is also a Dennis Root Public Safety  
2 Foundation on your CV. What does this foundation do? I  
3 can read, provides crime prevention and personal safety  
4 programs for children. I mean, are these -- is this a  
5 foundation that goes into public schools and provides,  
6 kind of, programs or presentations?

7 A. Well, it was a non profit that I formed. I was  
8 what they title in Florida, prime prevention practitioner,  
9 where I had gone through all the attorney general's  
10 classes on crime prevention, crime prevented through  
11 environmental design, basic, as well as residential and  
12 commercial crime prevention. And through my training  
13 company I had personal safety programs that I offered.  
14 And I started to realize through training that there was a  
15 group of people that was just completely left out.  
16 Seniors and children. And most of the time it was because  
17 people couldn't afford to pay for training. So in seeing  
18 that need, I created the Public Safety Foundation as a  
19 mechanism for providing crime prevention program for  
20 children and seniors was my focus. And we did -- I  
21 developed a program called the CAT Safety Program. C-A-T  
22 Safety Program. And it was for abduction prevention and  
23 awareness. And I provided it to the community, whether it  
24 was through chambers, through the school's, whatever  
25 group, church, whoever wanted it.

1 Q. Senior center?

2 A. Senior center. Anything. It was presented for  
3 free. Also for the seniors I did crime prevention. I did  
4 -- I would go to their homes and help do security surveys  
5 to help them identify security risks. Or sometimes it was  
6 health risks, like, trip mechanism and things like that,  
7 that could lead to injury. So I tried to work with our  
8 seniors and different groups to get that information to  
9 them. Again, for free. At no cost to any of them.

10 Q. It indicates that it was only in existence  
11 through 2018. My assumption is that you are no longer  
12 doing that, is because you made the move from Florida to  
13 Tennessee?

14 A. Correct. It was one of the oars I pulled out of  
15 the water. My wife made it very clear that retirement  
16 does not mean having four jobs.

17 Q. We talked about that you never had to discharge  
18 a firearm in the course of your career as a law  
19 enforcement officer. Did you ever have to use deadly  
20 means, a deadly force, in some other manner that it wasn't  
21 a weapon or something like that?

22 A. No. Because deadly force would be, create  
23 bodily harm or death.

24 Q. So in the 20 -- how many years did you actually  
25 have with law enforcement including, and I will leave out

1 the Pinkerton, but how many years?

2 A. Over all, certified 27.

3 Q. So in the 27 years as a law enforcement officer  
4 you never had to fire your weapon and you never had to use  
5 deadly force; is that right?

6 A. Correct. I've never had to -- and I want to be  
7 very clear. I have had to use force. And up to causing  
8 injury to someone.

9 Q. But not deadly force?

10 A. But I've never had to use deadly force, thank  
11 God. Usually the threatened use of deadly force was  
12 enough to dissuade them.

13 Q. As a law enforcement officer did you ever have  
14 the authority or, I guess authority is the right word, for  
15 final approval of any policies or procedures within any  
16 law enforcement agency? I know you said you've helped  
17 develop programs and provide training, but were ever, kind  
18 of like, the final approval for any policy or procedure  
19 within a law enforcement agency?

20 A. No. That only resides with the chief or the  
21 sheriff.

22 Q. Did you ever have any final disciplinary  
23 authority over another deputy? Where you got -- if there  
24 was an issue with some kind of discipline, whatever the  
25 case may be, were you ever the person that had the final

1 say on whether a law enforcement officer should be subject  
2 to discipline?

3 A. No. Again, that resides specifically with the  
4 chief or the sheriff.

5 Q. On your CV one of the things, it referenced  
6 supervision. I think it was maybe in your report. So I  
7 wanted to kind of, I guess, follow up on that. Is what,  
8 if you didn't have the final, I guess, say, so to speak in  
9 discipline, what kind of supervision did you have? If  
10 that makes sense. Do you understand what I am asking?

11 A. No.

12 Q. You have in your qualifications in your CV, "my  
13 duties included detention, road patrol, traffic,  
14 detective, K-9 training and supervision." So what I'm  
15 trying to figure out is, where was the supervision aspect  
16 of your duties as a law enforcement officer?

17 A. Well, there is multiple. Depends on how you are  
18 applying it. For example, as a field training officer you  
19 are responsible for the supervision of your trainee. Also  
20 as a sergeant assigned to the juvenile training center I  
21 was the day treatment program commander. I was  
22 responsible for all the staff. Civilian staff and law  
23 enforcement staff and correction staff assigned to the  
24 program. So when they made mistakes, I was responsible  
25 for documenting the mistake and submitting the written

1 reprimand to the Major for forwarding up through the chain  
2 of command.

3 You know, as a leader your job is to coach, guide and  
4 mentor. And at some point when it doesn't work it's to  
5 document and refer. So as a supervisor my responsibility  
6 was to make sure my guys did their jobs and if not forward  
7 them the opportunity to be educated and to correct the  
8 action. And if not then to document it and make  
9 recommendations as to, you know, in an agency that has a  
10 union or an agency that's got policies that's accredited  
11 certain violations warrant certain types of disciplinary  
12 action. So my job was to, if I wrote somebody up, it is  
13 to write them up for a violation and then the command  
14 staff makes the final decision as to what the discipline  
15 will be.

16 Q. So let me go back then and kind of break it  
17 down. You told me with Riviera Beach you did serve as an  
18 FTO?

19 A. Yes.

20 Q. So you would have had some supervisory  
21 responsibility over whatever new hire was assigned to you?

22 A. Correct.

23 Q. Other than your duty as an FTO at Riviera Beach,  
24 did you have any other supervisory responsibilities while  
25 you were there?



1           A.     If the sergeant was out I was one of the people  
2     named as, you know, a temporary supervisor. And I ran the  
3     shift as a sergeant's position. That wasn't the rank, it  
4     was just you were temporarily the supervisor for the shift  
5     in their absence. Provided you had the schools required  
6     by the contract to meet. If you didn't hold the rank you  
7     still had to meet all the education requirements and time  
8     requirements for the position in order to be given the  
9     opportunity to team leader.

10          Q.     So on occasion if the person in charge was out  
11     you would step in and fill in that role?

12          A.     Yes.

13          Q.     And also serve as an FTO?

14          A.     Yes.

15          Q.     Is there any other aspect of your job with  
16     Riviera Beach that was in a supervisory capacity? Other  
17     than those two things that we just talked about.

18          A.     Well, for example, in training there is no rank  
19     in training. When you go to training you're under the  
20     supervision of the lead instructor. They are responsible  
21     for your day, sending you home, giving you lunch breaks,  
22     the whole nine yards. If there is a problem and somebody  
23     attending training it's your job to document it and  
24     forward it through.

25          Q.     Now, while you were with Jupiter, I think you

1 told me you did not serve as an FTO there; is that right?  
2 Did I recall that correctly.

3 A. Correct.

4 Q. During the short period of time you were with  
5 Jupiter, did you have any kind of supervision over any  
6 other member of the Jupiter Police Department?

7 A. Outside of training, no.

8 Q. And with Martin County Sheriff's Department,  
9 we've already talked about, like, the juvenile services  
10 program. Aside from that and the supervision you would  
11 provide while you were doing training, did you have any  
12 other supervision of any other deputies?

13 A. Outside of field training officer and outside  
14 when I was a sergeant in the training or in the juvenile  
15 training center?

16 Q. Yes. That you can recall.

17 A. The only other ways that, I mean, again this is  
18 kind of splitting hairs but just like as lead detective,  
19 you are responsible for what is going on at a scene. You  
20 are responsible for coordinating and organizing and making  
21 sure that everything is getting done on your scene for  
22 your case. So I guess that would be a loose level of  
23 supervision. I would deem it as supervision because you  
24 are responsible for making sure the jobs get done. But  
25 not a formal position.

1 Q. When you were referring to, you know, using the  
2 term supervision in your qualification section of your  
3 report, is there any other aspect that you intended to  
4 include in supervision that we've not discussed when you  
5 use that term?

6 A. May I refer to it just so I can read what you  
7 are --

8 Q. It is page 6 of your report. There is the  
9 qualification section. And it's the first paragraph.

10 A. Can you restate your question?

11 Q. Sure. You included this information in your  
12 report; correct?

13 A. Yes.

14 Q. When you were preparing this report to include  
15 supervision, were you contemplating supervision as  
16 anything other than what you've already discussed with me  
17 here today?

18 A. No.

19 Q. Let's talk about your expert litigation work.  
20 Like, the case we are here about today. Are you able to  
21 tell me, and I am focused more on -- I know you have civil  
22 and criminal cases on your CV; correct?

23 A. Yes.

24 Q. I am focused on civil cases, okay. Are you able  
25 to give me a percentage of your work since you have been

1 doing expert witness work, for the plaintiff versus the  
2 defendant in a civil case?

3 A. I would have to look at the CV.

4 Q. Well, I will tell you, and you have the CV in  
5 front of you.

6 A. Yes.

7 Q. In the civil cases it looks to me like in all  
8 the civil cases you have been an expert for the plaintiff.  
9 But if you can show me a case on here that I missed then I  
10 will be more than happy to kind of retract that statement.

11 A. No. My CV is a representative of the cases that  
12 I have been involved in.

13 Q. And this listing that is included as part of  
14 your CV, these are the cases in which you have either  
15 given deposition and or trial testimony; correct?

16 A. Correct.

17 Q. Are there other cases, civil cases where you  
18 have been retained but you didn't have to give testimony?

19 A. Oh, yes.

20 Q. Are you able to give me, of that kind of  
21 category of cases, how many, what the percentage is  
22 plaintiff versus defendant in cases where you didn't have  
23 to give testimony?

24 A. Not now, no. I couldn't off the top of my head.  
25 May I go back to something that you said earlier? For

1 some reason it is resonating in my head.

2 Q. Sure.

3 A. When we talked about policies and things like  
4 that you mentioned that I taught training programs. And I  
5 just wanted to make sure that I was clear when you  
6 mentioned Palm Beach Shores. I was the party responsible  
7 for the development and submission of their policies and  
8 procedures for the agency as a whole.

9 The way you had phrased it to me earlier has been  
10 bouncing off, I know you were in training and developed  
11 programs, so I just want to make sure that there is a  
12 distinction between policy development and submission  
13 versus training program development and submission.

14 Q. Regarding the testimony that is listed on here,  
15 the testimony that was presented at trial, are you aware  
16 of any of the occasions, where it's a criminal or a civil  
17 case, where your testimony at trial was actually presented  
18 by way of video versus you attending the trial in person?  
19 Does that make sense?

20 A. I believe I understand what you -- no. I  
21 believe I've been physically at each trial. I have done  
22 deposition through video.

23 Q. I understand. But if you understand that your  
24 testimony was being presented at trial, you have been  
25 physically in attendance at that trial as opposed to --

1 attorneys sometimes because a witness is not available to  
2 attend trial in person and we preserve that witness's  
3 testimony by video and then it's played to the jury at  
4 trial, you don't recall that ever happening in any of the  
5 cases where your testimony was presented?

6 A. Correct.

7 Q. I note that there are two cases listed in the  
8 State of West Virginia. It is on page 14 of your updated  
9 CV.

10 A. Okay.

11 Q. The first one is at the top of the page. State  
12 of West Virginia verses Micah E. LeMaster. You see that?  
13 That was in the Circuit Court of Cabell County?

14 A. Yes.

15 Q. Actually I misspoke. There are three. Two at  
16 the bottom of the page, Xavier Thomas and Martin Thomas v.  
17 City of Huntington, that was deposition testimony. And  
18 then Nicholas Evans v. City of Huntington. I was thinking  
19 there was one other criminal case that you had testified  
20 in.

21 Yes. Page 13. State of West Virginia v. Orville Cobb.  
22 So it looks like in looking at your CV you have been, at  
23 least, given testimony either by trial or by deposition in  
24 four cases in West Virginia. Does that sound about right?

25 A. Yes.

1 Q. The depositions that gave in the two civil case,  
2 the Thomas and the Evans case, did you go to West Virginia  
3 for those depositions or did the attorneys come to you?  
4 If you recall.

5 A. I don't recall.

6 Q. The two criminal cases, it looks like you were  
7 retained by one attorney in one case and a different  
8 attorney in the other case but you testified at trial. So  
9 based on our prior discussion, safe to say you traveled to  
10 West Virginia for both of those occasions?

11 A. Yes.

12 Q. Have you ever gone to West Virginia to provide  
13 testimony that you can recall other than those two  
14 criminal trials?

15 A. In trial?

16 Q. In trial or deposition. If you can recall.

17 A. I can't recall. The other two cases in West  
18 Virginia I can't recall if it was in person there. I  
19 don't remember.

20 Q. Okay.

21 A. I believe one of them, they came to Florida.

22 Q. All of the cases, if we look at the timing with  
23 the exception of maybe the criminal case of State of West  
24 Virginia v. Orville Cobb, it was August of '18, were you  
25 still in Florida in August of '18 or had you moved to

1 Tennessee by that time?

2 A. August '18 actually we moved to Tennessee in  
3 August of 2018.

4 Q. I wanted to talk to you about those West  
5 Virginia cases a bit, if I might. The State of West  
6 Virginia v. Micah E. LeMaster's case, looks like you  
7 testified at trial in November of 2016 in the Circuit  
8 Court of Cabell County. It just says case involved use of  
9 deadly force-self-defense. Do you recall details about  
10 the case? What the case was about? Other than just the  
11 use of deadly force-self-defense?

12 A. Some, yes.

13 Q. Can you give me a little bit of background about  
14 the case?

15 A. Sure.

16 Micah LeMaster used deadly force to protect himself and  
17 his family from an individual trying to force entry into  
18 their home. It was the middle of the night and a naked  
19 man was on his front porch pounding on his front door. He  
20 was there with his wife and two or three little children.  
21 Gave warnings through the door that, you know, I have a  
22 gun. And the response was, I have a gun too and I am  
23 going to burn your place down. He shot through the door.  
24 The man ran across the street. Tried breaking in, or was  
25 pounding on the front door of another residence. Micah



1 went out to his front yard. The man ran around and then  
2 came running back toward Micah's residence heading  
3 straight for his open front door. Micah LeMaster  
4 intervened. Kept yelling at him to stop. Once he got  
5 close enough he shot him and the gentleman ended up dying  
6 on the scene.

7 Q. Did the person who was shot and killed by Micah  
8 LeMaster, did it turn out in fact that he had a weapon?

9 A. No. He had no weapon.

10 Q. So Mr. LeMaster shot and killed an unarmed man?

11 A. Correct.

12 Q. And so you were retained on behalf of  
13 Mr. LeMaster; correct?

14 A. Correct.

15 Q. Is it safe to say that you testified, and you  
16 tell me if I am misstating what I assume, maybe, your  
17 opinion was, that you believe the shooting was justified  
18 based on the fact that Mr. LeMaster feared that there was  
19 going to be bodily harm -- great bodily harm or injury to  
20 himself or his family members?

21 A. In a nutshell, yes.

22 Q. Do you know what the outcome of the case at  
23 trial was?

24 A. I believe he was acquitted on all charges.

25 Q. So in that situation the person who was knocking

1 on Mr. LeMaster's door in the middle of the night turned  
2 out that he was not armed?

3 A. It was much more significant than knocking on  
4 his front door. It did turn out that he did not possess a  
5 weapon.

6 Q. The case, and you can refer to your CV and I  
7 will tell you the page, it's page 14 of 17. It looks like  
8 the LeMaster's case, the Thomas and the Evans you were  
9 retained by the same attorney in all three of those cases.  
10 A gentleman by the name of Rich Weston. Do you see that?

11 A. Yes.

12 Q. Do you know how Mr. Weston learned about you?  
13 For instance, do you advertise on any kind of list serve  
14 or expert witness site or anything like that?

15 A. In the past I have. I believe that most if not  
16 all of my business that I've ever had was based on either  
17 word of mouth or, what really started it was, I was the  
18 expert in the George Zimmerman case out of Florida and I  
19 guess, from what I heard from an attorney is, it was a  
20 graphic depiction of my knowledge base and ability to  
21 present testimony. And that's how I got a phone call.

22 Q. So was the Zimmerman case your first kind of  
23 foray in to trial testimony?

24 A. No.

25 Q. From an expert witness perspective?

1           A.    I presented it as the expert for officer  
2 involved shootings. I was the go-to expert for the 19th  
3 circuit for officer involved shooting for grand juries and  
4 providing testimony to the grand jury about what justifies  
5 and what doesn't justify a particular event. So I have  
6 that experience. The George Zimmerman case was the first  
7 case in, I want to say, private work where I was not a law  
8 enforcement officer talking about law enforcement  
9 applications of force.

10          Q.    Fair enough. I think I understand the  
11 distinction.

12          Xavier Martin v. City of Huntington case. It says,  
13 "case involved police practices and law enforcement use of  
14 force." Can you give me any more details about the case  
15 other than that description?

16          A.    I believe that was a case where Xavier Thomas  
17 was at a gas station and he had observed a traffic stop  
18 taking place. And then was subsequently confronted by law  
19 enforcement. Pulled out of his vehicle. And there was an  
20 application of force by law enforcement.

21          Q.    Not deadly force? Meaning, it doesn't say the  
22 Estate of Xavier Thomas, so I am assuming Mr. Thomas was  
23 not killed as a result of any force applied by the police  
24 department?

25          A.    Correct.

1 Q. It indicates that you only testified in  
2 deposition. You never had to testify on trial in that  
3 case?

4 A. That's correct.

5 Q. The case was pending in federal court in West  
6 Virginia. Did you prepare a written report then like you  
7 did in this case and provide to counsel?

8 A. Oh, I'm sure.

9 Q. The Nicholas Evans v. City of Huntington case,  
10 it was around the same time as the Thomas case against the  
11 same city. It says, "DUI investigation and Law  
12 Enforcement Use of Force." Can you tell me any more  
13 details about that?

14 A. The only thing I remember about that case was  
15 that it was a DUI stop and subsequent application of force  
16 that resulted in the client in this matter losing his  
17 front teeth. That's the extent of what I can remember on  
18 that particular matter.

19 Q. Do you know, since it doesn't list trial  
20 testimony for either of those, did either of those cases  
21 proceed to trial?

22 A. I believe they settled. But I am not a hundred  
23 percent certain.

24 Q. Are you aware of any case where you were  
25 retained as an expert and the case actually proceeded to

1 trial, but for one reason or another you were not called  
2 as an expert by the party who retained you?

3 A. No.

4 Q. The other case that was in West Virginia is on  
5 page 13 of your CV. It is State of West Virginia v.  
6 Orville Cobb the III. It was in the Circuit Court of  
7 Putnam County. Now, this indicates, case involved  
8 investigations and the use of deadly force for  
9 self-defense. Do you have any further recollection about  
10 that case?

11 A. That was a case where, if I remember right, Mr.  
12 Cobb stabbed a man. My review of the case and the  
13 investigation that was conducted that I was asked to opine  
14 on the investigation itself and also on the application of  
15 deadly force.

16 Q. When you say the investigation, are you talking  
17 about the investigation into the use of deadly force?

18 A. In to the -- yes. Into that event in its  
19 entirety by law enforcement.

20 Q. Do you recall what law enforcement agency was  
21 involved in the use of deadly -- who investigated the use  
22 of the deadly force?

23 A. I don't recall the name of the agency.

24 Q. So if I understand what you've told me, there  
25 was an incident where there was a criminal defendant who

1 stabbed and ultimately killed someone?

2 A. Yes.

3 Q. And you kind of gave an opinion on that and  
4 whether that use of deadly force was reasonable or not?

5 A. Yes.

6 Q. And you also gave an opinion as to the nature of  
7 the investigation by the law enforcement agency itself?

8 A. Correct.

9 Q. Do you know what the outcome of that trial was?

10 A. I believe he was found not guilty. I believe.

11 Q. Are there other cases that you can recall  
12 specifically where you were retained involving a West  
13 Virginia claim where maybe you didn't have to give  
14 deposition or trial testimony? So it wouldn't make it on  
15 this list.

16 A. Not in West Virginia, no.

17 Q. Do you, other than the case we are here about  
18 presently, do you have any other cases that are pending in  
19 West Virginia?

20 A. I was just recently retained on a West Virginia  
21 case. A civil case. As a matter of fact, Rich Weston is  
22 the attorney. And I believe it's, once again, against the  
23 Huntington Police Department. I haven't gotten all --  
24 I've just recently been retained. So, I mean, I am still  
25 waiting for discovery and everything to come in for that

1 matter.

2 Q. So safe to say, since you don't have, like,  
3 discovery, et cetera, have you formed any opinions in that  
4 case yet?

5 A. No, ma'am.

6 Q. Other than that case, were you just recently  
7 retained in the cases we are here about today, do you  
8 recall any other cases you have pending in West Virginia?

9 A. No.

10 Q. How many other active expert witness cases do  
11 you have pending right now? I am not limiting it to West  
12 Virginia?

13 A. Maybe three or four. It's hard to say because  
14 some of them could be a couple of years old. Sometimes it  
15 takes forever for anything to go anywhere. I think three  
16 or four is a safe number.

17 Q. Are you able to tell me location, meaning state  
18 where those cases would be pending?

19 A. I know there is a couple in Florida. One in  
20 Arizona. But to be honest with you I don't recall if I  
21 have already been retained on that case or if it's just  
22 where they were -- cause it's the state or the -- they are  
23 doing something with the state to approve expenditures, I  
24 think. So I don't know if I can count that one because I  
25 am not sure that will actually come in. I know I've had

1 the interviews. And then obviously this matter. I think  
2 that's -- I believe that's it.

3 Q. In looking at the, generally, the case  
4 description where it says case involved and you have a  
5 description of the case. Doing a quick review here. Most  
6 of them, not all, most of them either say use of force or  
7 use of deadly force. If the case does not, for instance,  
8 there is one that says State of Florida v. John Robert  
9 Forgette. And it just says, police practices and  
10 procedures. It's on page 15. If there is no reference to  
11 use of force in the description section, am I okay to  
12 assume that those cases did not involve some aspect of the  
13 use of force?

14 A. Yes. Correct.

15 Q. Any other incident where it says use of force or  
16 use of deadly force, some aspect of an opinion you  
17 provided touched upon either the use of force or deadly  
18 force by a law enforcement officer in the context of a  
19 civil case or the use of force or deadly force by a  
20 criminal defendant in a criminal case?

21 A. Correct.

22 Q. If we look at the timing, like, when it lists --  
23 and I'm making the assumption. You tell me if I am wrong.  
24 Like, if it says on the top of page 14, for instance,  
25 State of West Virginia v. Micah LeMaster November of 2016,



1 is the November of 2016 that is in parenthesis when you  
2 would have testified at trial?

3 A. Yes.

4 Q. So if one references a deposition, the month and  
5 the year would be when you actually gave the deposition?

6 A. Yes.

7 Q. So if we look at the dates that are listed we  
8 would be able to figure out what business you had at the  
9 time you were doing that expert witness work and provided  
10 that testimony? Whether it was Dennis Root & Associates  
11 or Professional Investigations Training Council or the  
12 like?

13 A. Yes.

14 Q. Now, you just provided this as being updated  
15 September the 11th, which was last week. So is it safe to  
16 say that last time that you have given any deposition  
17 testimony was in January of this year? Since that is the  
18 last occasion listed on your CV?

19 A. Yes.

20 Q. Now, you were deposed. And that's a criminal  
21 case, State of Florida v. Abraham Dejesus Canaan?

22 A. Yes.

23 Q. The attorney, Mark O'Mara, is that the same  
24 attorney that represented Mr. Zimmerman?

25 A. It is.

1 Q. This says, "use of deadly force by law  
2 enforcement," so is the criminal defendant a law  
3 enforcement officer?

4 A. No. He was shot by law enforcement.

5 Q. Okay. So what is the criminal defendant charged  
6 with?

7 A. I believe he was charged with, maybe aggravated  
8 assault. I don't recall the exact charge for him. He had  
9 mental health issues. I don't recall exactly what they  
10 charged him with.

11 Q. I'm just trying to figure out if you were  
12 retained by Mr. O'Mara on behalf of the criminal  
13 defendant. Are you giving an opinion about the use of  
14 deadly force by law enforcement officer?

15 A. That was in the case, yes.

16 Q. Is that what you were retained for?

17 A. Yes.

18 Q. What opinion did you have, or what opinions did  
19 you give in that case?

20 A. I couldn't tell you for certain. I don't recall  
21 off the top of my head. It was a very unique experience.

22 Q. Was the law enforcement officer who used deadly  
23 force charged at all?

24 A. No.

25 Q. Was the use of deadly force by law enforcement

1 officer involved in an incident involving that criminal  
2 defendant?

3 A. Yes.

4 Q. Okay. Do you have any other depositions  
5 currently scheduled in any other case?

6 A. No.

7 Q. Do you have any upcoming trial testimony that  
8 you know when the date is supposed to be?

9 A. There is one in December.

10 Q. Where is that located?

11 A. That one is in Florida. I think that one is  
12 Palm Beach County, Florida.

13 Q. Is that a civil or criminal case?

14 A. That is a criminal case involving a retired  
15 police officer.

16 Q. Is the defendant a retired police officer?

17 A. Yes.

18 Q. You were retained on behalf of the criminal  
19 defendant?

20 A. Yes.

21 Q. Any other trial testimony that you are aware of  
22 that is scheduled?

23 A. One is scheduled again for March. But this is  
24 the third time that they have changed the scheduled date.  
25 So March of next year. I think either February or March

1 was the last e-mail that I got from them. I don't think  
2 that they know when it is going. So at this stage that's  
3 it. That one, like I said, that's like the third time,  
4 oh, we are going to put it here and there is always  
5 something that happens.

6 Q. Is that a civil or criminal case?

7 A. I believe that one is a criminal case as well.

8 Q. Do you know where it is pending?

9 A. I think it was Indian River County, Florida.

10 Q. Florida, okay. Are you able to look at your  
11 case list and tell me, I guess maybe, the deposition that  
12 we just talked about that you had in January of 2019, it  
13 says, "use of deadly force by law enforcement." Are we  
14 able to look and see, for instance, if it's a civil case  
15 and the defendant in the case is some law enforcement  
16 agency, is it safe for me to assume if it says use of  
17 force or use of deadly force, that your opinion involved  
18 use of force by a law enforcement agency? Does that make  
19 sense?

20 A. Yes.

21 Q. I'm just trying to short circuit going through  
22 some of the cases on your case list. So if it's a civil  
23 case, would most of the occasions since you were retained  
24 by the plaintiff, most of the civil cases you've been  
25 retained in, safe to say you've been retained as an expert

1 against law enforcement?

2 A. Sadly, yes.

3 Q. The Jordan v. Ohio Department of Public Safety,  
4 it says, "use of force law enforcement." So if you have  
5 that description, I can look through the CV and figure out  
6 which case involved law enforcement and use of force or  
7 use of deadly force?

8 A. Yes.

9 Q. You've been involved in some aspect of law  
10 enforcement, you said, for 27 years; right? Give or take.

11 A. Yes.

12 Q. Do you have any idea, Mr. Root, about how many  
13 law enforcement officers are killed in the line of duty  
14 every year by the use of a weapon?

15 A. The most current statistic?

16 Q. Yeah.

17 A. I couldn't give you the exact number right now.  
18 I do know it's in the hundreds that are killed each year.  
19 As far as weapon designations, open hands, things like  
20 that, that's broken down through the FBI's codes.

21 Q. You said you had maybe three to four current  
22 active cases. Is that safe to say that its other than  
23 this one or does that include this one?

24 A. That includes this one.

25 Q. So we've got the one that is set for trial in

1 December. The one that's set for trial in February or  
2 March, whenever it goes. This one. Is there another one  
3 that is active?

4 A. Potentially that Arizona case. I don't know if  
5 I'm actually on that case or not. Dealing with the state  
6 it's not like a normal case where there is a retainer up  
7 front. There is a lot of things to go through when  
8 dealing with the states.

9 Q. Obviously the one that you were just contacted  
10 about more recently by Attorney Rich Weston in West  
11 Virginia?

12 A. Yes.

13 Q. So the two that are set for trial involve  
14 criminal defendants?

15 A. Yes.

16 Q. This one is a civil case?

17 A. Correct.

18 Q. The one in Arizona was, do you recall civil or  
19 criminal?

20 A. I don't. No, I don't want to misspeak myself.  
21 I'm not really sure. I think, well no, it's a criminal  
22 case.

23 Q. So of those four we've got one officer involved  
24 shooting from a civil case perspective, this case?

25 A. For a civil case, yes.

1 Q. The one that you were contacted about by  
2 attorney Weston in West Virginia, you said you thought it  
3 was also involving the Huntington Police Department. Does  
4 that involve an officer involved shooting? Do you know  
5 the details yet?

6 A. I couldn't tell you the specifics on everything,  
7 the weapons and things yet.

8 Q. Do know, was there some kind of alleged use of  
9 force? Do you have that basic information?

10 A. Yes. I wouldn't be in the case if it wasn't for  
11 an application of force.

12 Q. Was it deadly force? Or you don't know yet,  
13 okay.

14 A. I know there was somebody injured and  
15 everything. You know, we've had our brief conversation  
16 about it. I am still waiting to get information.

17 Q. Do you know, in that case, has a lawsuit  
18 actually been filed yet or do you know?

19 A. I have no idea.

20 Q. Have you ever, in a civil case, so I'm talking  
21 specifically about a civil case, have you ever provided an  
22 opinion in any civil case that a police officer was  
23 justified in the use of deadly force? For instance in  
24 shooting a suspect?

25 A. I don't think I've gotten a case like that yet.

1 Well, you said a civil case; right?

2 Q. Yes, a civil case.

3 A. Not the grand juries and things like that.

4 Q. Yeah, a civil case.

5 A. I think there was a case filed. But I don't  
6 know. I believe there was a case. You asked if the case  
7 had already been filed for Mr. Weston's.

8 Q. Yeah.

9 A. I believe that it was, but I am not a hundred  
10 percent.

11 Q. So kind of going back to that question that I  
12 just asked you. Just to kind of follow up on the  
13 distinction. While you were still in law enforcement you  
14 testified at grand juries where there was an investigation  
15 into an officer involved shooting; right?

16 A. Correct.

17 Q. In those occasions you were testifying or  
18 offering testimony in your capacity as a law enforcement  
19 officer not a retained expert, so to speak?

20 A. No. I was offering it as an expert in the use  
21 of force by law enforcement.

22 Q. Was that while you were with Dennis Root &  
23 Associates or were you still with law enforcement?

24 A. I was still with law enforcement. They make a  
25 very big distinction when you testify how you are going to



1 be presenting the information.

2 Q. Fair enough. The question that I'm asking is in  
3 those cases you did not have an outside business that you  
4 were providing the testimony through?

5 A. Correct. I volunteered my time.

6 Q. So you were not, aside from getting your regular  
7 pay from whatever law enforcement office you were working  
8 for at the time, you were not compensated for any  
9 testimony that you gave in those grand jury proceedings?

10 A. I was paid by the sheriff's office.

11 Q. Paid but not like in an expert witness case;  
12 right?

13 A. No. They didn't pay the rates that expert  
14 witnesses get.

15 Q. When is the last time, I mean, is it listed on  
16 here that the last time you would have testified before a  
17 grand jury as well?

18 A. Yes. All of them are on there.

19 Q. So all of your grand jury testimony is also  
20 listed on there?

21 A. Yes.

22 Q. Would you agree with me, Mr. Root, that part of  
23 their job duties as a law enforcement officer requires law  
24 enforcement officers to be involved in tense and dangerous  
25 situations?

1 A. Yes.

2 Q. Have you, as far as you know, ever been  
3 disqualified by any court from giving any opinion that you  
4 had offered in a case?

5 A. Does that mean excluded?

6 Q. Yes.

7 A. Yes.

8 Q. Are you able to give me any detail or provide  
9 details? Was it more than one case, one case?

10 A. It was in West Virginia. I'm trying to remember  
11 the name. It was a criminal case.

12 Q. Is it one of the ones that would be listed on  
13 here? We have two criminal cases.

14 A. No. I don't think this was on here because it  
15 went -- the state attorney made no effort to interview me  
16 until a Daubert hearing.

17 Q. Did you actually testify at a Daubert hearing in  
18 West Virginia?

19 A. Yes.

20 Q. Do you know who the attorney was who had  
21 retained you?

22 A. Oh, my goodness. Ashley Lockwood, I think.

23 Q. Do you recall any details about the case?

24 A. Oh, yes. Expensive.

25 Q. It was a criminal case?

1 A. Yes.

2 Q. Tell me what it was about.

3 A. Mr. Hughes was charged with murder because he  
4 was involved in a shooting in which he was attacked in a  
5 home and he used a firearm to defend himself.

6 Q. And as a result of him using the firearm to  
7 defend himself was somebody killed?

8 A. Oh, yes.

9 Q. So you were retained by who you believe was  
10 Ashley Lockwood on behalf of the criminal defendant?

11 A. Yes.

12 Q. I think what you were kind of indicating to me  
13 is, like we are doing here taking your deposition, the  
14 prosecuting attorney in that criminal case never asked to  
15 take your deposition at any point and time prior to having  
16 you testify at a Daubert hearing?

17 A. That is correct.

18 Q. Do you know where the case was pending? And by  
19 that I mean in state or federal court?

20 A. It was -- I'm not familiar with the geography of  
21 West Virginia. But Orville Cobb's case was -- I testified  
22 in that matter four days, I think. Several days before.  
23 Or two days before the Daubert hearing on the other side  
24 of the state.

25 Q. You mean on the other side of the state. Like,

1 how far did you have to drive?

2 A. Hours to get there. It's hard to -- driving to  
3 the mountains that could be just ten feet. I don't really  
4 know. It was past -- I was on one side of Huntington. I  
5 remember driving through Huntington. Then the next time I  
6 was well past Huntington heading the opposite direction.

7 Q. As a result of you providing testimony at that  
8 Daubert hearing, did the court preclude you from  
9 testifying?

10 A. That's my understanding.

11 Q. Were you given any explanation as to what the  
12 basis of the court ruling was precluding you from giving  
13 your testimony?

14 A. The summations I got from the attorneys  
15 involved, because it was Ashley Lockwood and there was  
16 another attorney, I can't think of his name, the judge  
17 didn't see how I had anything to offer to any body.  
18 Incredible because the state actually told me that they  
19 reinvestigated the entire case because of my report. But  
20 apparently the court felt differently.

21 Q. Were you ever provided a copy of any order that  
22 was entered by the court?

23 A. I was not.

24 Q. Other than that occasion where you testified at  
25 a Daubert hearing in West Virginia, have you ever provided

1 any other testimony at any other Daubert hearings?

2 A. Oh, yes.

3 Q. Where, generally?

4 A. Most of it was in Florida.

5 Q. Were those --

6 A. As a matter of fact I think that's the only  
7 other state where I have been in Daubert hearings.

8 Q. Do you recall those occasions where you  
9 testified at Daubert hearings in Florida, were they civil,  
10 were they criminal, combination of both?

11 A. I know one was criminal. I know for a fact one  
12 was criminal.

13 Q. Okay.

14 A. I don't know. Maybe they are all criminal I  
15 would think. Because I don't think there was a civil case  
16 down there that I can think of.

17 Q. The occasions where you testified at Daubert  
18 hearings in Florida, assuming your recollection is correct  
19 that they may have been criminal cases, were you precluded  
20 by the courts in any of those cases from giving testimony?

21 A. At a Daubert hearing?

22 Q. Yes.

23 A. No.

24 Q. Well, as a result of the Daubert hearing?

25 A. No.

1 Q. As a result of the Daubert hearing you were not  
2 precluded from giving testimony at the trial?

3 A. No. Correct.

4 Q. Aside from actually having to testify at a  
5 Daubert hearing, are you aware of any of these cases that  
6 are on your list where you have been the subject of a  
7 Daubert motion where the opposing counsel has filed a  
8 motion challenging your qualifications or your ability to  
9 provide testimony?

10 A. I am trying to think. There was a recent case  
11 in Florida where -- but it wasn't a Daubert hearing, it  
12 was a stand your ground hearing. I guess they call them  
13 their immunity hearings. But they call them a stand your  
14 ground hearing. It was just before the judge and the  
15 attorney was trying to present me. It was a last minute  
16 retention. I didn't have any opinions on the activities  
17 of the defendant in the case. It is not what he had asked  
18 me to review. The state challenged that and the judge  
19 basically said, I don't need him for me to better  
20 understand how to read the case. So he didn't have me  
21 testify at that hearing. But it has not gone beyond  
22 anything like that as far as trial or depo because I don't  
23 have any opinions for their client.

24 Outside of that, the Daubert hearings in Florida that I  
25 have been through I have testified at trial following.

1 Q. Are you aware of, in any civil case where you  
2 have been retained as an expert, at least on the list that  
3 we have, you were retained on behalf of the plaintiff  
4 suing some law enforcement agency, are you aware in any of  
5 those cases whether you were the subject of any Daubert  
6 motion?

7 A. No.

8 Q. And again, no you are not aware --

9 A. Oh, I'm sorry.

10 Q. It's the way I asked the question.

11 A. No, I'm not aware of anything like that.

12 Q. Based on your experience in doing the expert  
13 witness work, if there is a challenge like that do the  
14 attorneys usually let you know if there has been some kind  
15 of issue raised?

16 A. Yes. As a matter of fact, now it's a part of my  
17 actual service agreement that they have to tell me. But  
18 prior to -- if there has been a challenge, they've always  
19 gotten me because they want to discuss whatever the  
20 challenge might be.

21 Q. How they can kind of rebut the challenge.

22 A. Right. If there is anything.

23 Q. So based on that, you are not aware of any  
24 situation in any of the civil cases where the opposing  
25 counsel has challenged your ability to testify in the form

1 of a Daubert motion?

2 A. Correct.

3 Q. Have you ever been, maybe, permitted to testify  
4 at trial but the court has limited the opinions that you  
5 intended to give in any manner?

6 A. Yes.

7 Q. More than one occasion under that circumstance?

8 A. I know of -- I can think of one immediately  
9 right off the top of my head.

10 Q. Tell me about that.

11 A. George Zimmerman case.

12 Q. How were you limited by the court?

13 A. Well, I can tell you, that was the very first  
14 time I had done anything like that. So one of my opinions  
15 was actually that his actions were objectively reasonable.  
16 Well, that and the province of a jury, so that obviously  
17 got excluded. Others were regarding Mr. Zimmerman's  
18 training and things. And the court excluded a lot. I  
19 mean, just about everything. But I was allowed to testify  
20 into training requirements and considerations of force  
21 concepts and things like that to help the jury better  
22 understand what's involved in the use of force.

23 Q. Is there any other occasion you could think of  
24 like that where you have been permitted to give testimony  
25 but the court has limited the nature of the opinions you



1 would give or anything like that?

2 A. Not that I'm aware of, no. That one just stood  
3 out because it was a very big learning experience.

4 MR. EDWARDS: Can we take a short break.

5 MRS. DURST: Absolutely.

6 (Off the record)(11:19 a.m.)

7 (Back on the record)(11:27 a.m.)

8 BY MRS. DURST:

9 A. I thought of something. I think earlier you  
10 asked me if I ever had a matter in which I didn't testify  
11 by deposition or at trial where, I don't remember the  
12 exact wording, but it was justified. It wasn't a shooting  
13 but it was a law enforcement use of force. I was hired by  
14 an attorney to evaluate an officer's use of force. Never  
15 went to deposition or trial because the outcome of it was,  
16 I didn't find where the officer had done anything wrong.  
17 If fact, it was quite to the contrary. There was so much  
18 more he could have done but didn't. The name has escaped  
19 me, but if you need it I can look it up. I mean, it's  
20 just I was retained and basically the end result was, you  
21 tell the attorney it's not going to work that way.

22 Q. Do you know, was a lawsuit actually filed or  
23 were you just being consulted kind of like the claim  
24 investigation stage?

25 A. A law suite was actually filed because he became

1 very angry with me that -- I have a protocol that I go  
2 through with an interview before I ever take a case. It's  
3 very in depth. The information provided after the  
4 interview and discussion was completely contrary to what  
5 was presented during our conversation. And then he wanted  
6 to be angry with me because he had to have somebody in  
7 court. Well, that's not my problem. But I believe it was  
8 filed.

9 Q. Was that a civil case?

10 A. No. I know it was a civil case because it was  
11 not a criminal case.

12 Q. Do you know where that case was?

13 A. It was in Florida.

14 Q. Okay.

15 A. I don't know where in Florida because it was, if  
16 I remember right, it was a fish and wildlife officer. So  
17 it could have been anywhere from Tallahassee down to  
18 Miami.

19 Q. Do you know, did the attorney specifically  
20 identify you as an expert in any court filings?

21 A. Given his level of irritation, it's possible.  
22 But it's also possible he identified me before he ever  
23 retained me. That part I don't know. But I can try to  
24 find the name and look through my old case files.

25 Q. Do you keep a list, I mean, obviously you keep

1 the list where you've testified, either in grand jury,  
2 deposition or trial, do you keep a list of cases that  
3 you've had over the years where you have been retained  
4 whether you provide testimony or not?

5 A. No.

6 Q. Has any attorney that has ever retained you made  
7 you aware that there was any opinion published by any  
8 court, whether it's a state court or, you know, a federal  
9 district court or anything like that, that called into  
10 question any opinions that you had given in a case?

11 A. No.

12 Q. Are you aware of any case that has been  
13 published by any court that has addressed your opinions?

14 A. No.

15 Q. Have you ever testified as an expert either in  
16 trial or deposition on felony traffic stops?

17 A. No.

18 Q. With regard to your expert witness work, my  
19 understanding is, you are compensated hourly at \$250 an  
20 hour; is that right?

21 A. Correct.

22 Q. Is that for any and all work performed in the  
23 case?

24 A. Yes.

25 Q. Is there a different rate for trial testimony,

1 or is it still \$250 an hour?

2 A. \$250 an hour.

3 Q. With regard to expenses. It says your, I think  
4 maybe the fee schedule or something says, "the cases that  
5 require over night travel are billed at a flat rate.  
6 Travel fee of a thousand per day." So is that just for  
7 travel and then if you are doing work, you are still  
8 billing at \$250 an hour? Does that question make sense?

9 A. It does. It's a travel fee, period.

10 Q. It doesn't matter how many hours it takes you to  
11 get --

12 A. Correct.

13 Q. If it's over night travel it's a \$1,000?

14 A. Correct.

15 Q. If it's like us trying to get back from  
16 Jacksonville the other day and your flight is delayed and  
17 it's longer, you may lose time. But if it takes three  
18 hours you may actually get a little bit more otherwise?

19 A. Correct. When I came back from Miami and I  
20 spent all day in the airport it was still the same fee.

21 Q. Airfare and hotel expenses are separate than the  
22 over night travel \$1,000?

23 A. Correct.

24 Q. If the case that we are here about today  
25 actually proceeds to trial and I believe it's also

1 scheduled the first part of March of next year, do you  
2 know, do you plan to appear in person at trial?

3 A. Yes.

4 Q. Now, I understand you are not really doing --  
5 well, you are still doing some training, aren't you?

6 A. Yes.

7 Q. Are you able to tell me, you kind of gave me an  
8 estimate of the 20 to 25 for expert witness work, what is,  
9 like, the percentage of your income now for expert witness  
10 work versus training work? Just on a percentage basis.

11 A. Just the individual training work?

12 Q. Yeah.

13 A. Well, this year with the training that I've  
14 done, maybe 40 percent expert. Because I am actually  
15 building an online training course program. I have taken  
16 the last few months off of adding anything to my plate if  
17 possible and just building online trainings. So the  
18 training has diminished until it picks back up once I  
19 launch the online stuff.

20 Q. So it's now about maybe 60 training, 40 expert  
21 witness work?

22 A. Yes. Maybe 55/54.

23 Q. I understand it can fluctuate depending on  
24 whether you are contacted by an attorney to serve as an  
25 expert in a case; right?

1 A. Yes.

2 Q. You told me that you receive an actual pay check  
3 from Professional Investigations Training Council?

4 A. No.

5 Q. That was when you were with Dennis Root &  
6 Associates?

7 A. Correct.

8 Q. Do you receive any kind of, or do you take any  
9 kind of bonus out of the Professional Investigations  
10 Training Council?

11 A. No. It's brand new. Everything stays in it.  
12 Especially with the cost of building something online  
13 today.

14 Q. I had asked you previously when, I think when I  
15 was asking you about Rich Weston the attorney in West  
16 Virginia, if you knew how he had contacted you. And I had  
17 asked about advertising. Do you advertise your services  
18 as an expert witness in any capacity what so ever?

19 A. No.

20 Q. Have you, in the past, advertised your services?

21 A. I have had a profile on Experts.com and ALM, I  
22 think is the name of the periodical that was published.  
23 Back when I had Dennis Root & Associates. Before I  
24 retired from full-time duties.

25 Q. So, pre professional Investigations Training

1 Council?

2 A. Yes. The only other things that I have -- well,  
3 I don't pay for it or anything, but I have a profile in  
4 LinkedIn. I don't consider it advertising. Actually I  
5 probably don't do anything on there anymore. But that is  
6 it. I don't do anything other than word of mouth. If  
7 somebody calls me and I evaluate it case by case.

8 Q. Do you have any kind of other social media site  
9 for your business, like a Facebook page or anything?

10 A. Oh, yes. Forest Concepts Training Council has a  
11 Facebook page and website.

12 Q. Do you administer that?

13 A. Yes. I am the man that wears all the hats. I  
14 also have a social media page called the PI Answer Man.

15 Q. What social media platform is that through?

16 A. Facebook.

17 Q. Is that something, the PI Answer Man, where  
18 someone can go on and ask you a question and you will  
19 respond?

20 A. Yes. It's a free resource for investigators  
21 nation wide. If I try to share information about  
22 professional investigations. I got blessed with success  
23 as a business owner and I just try to pay it forward to  
24 give advice or information to people educationally about,  
25 if you are thinking about it, here are things to consider.

1 Q. Does your business have a Twitter account?

2 A. I know I have a Twitter account. And I think  
3 the PI Answer Man does. I probably shouldn't because I  
4 don't think I put much out there because I still don't  
5 understand reducing something into a hundred and forty  
6 characters. I can barely get my own -- out of my house  
7 without saying it in four hundred words.

8 Q. Yeah. I gotcha.

9 Do you know specifically in this case, Mr. Root, how  
10 the attorneys representing the Estate of Philip Rhoades  
11 located you?

12 A. I don't.

13 Q. Have you ever provided any kind of presentation  
14 to a group of attorneys?

15 A. Oh, yes.

16 Q. What kinds of presentations have you provided to  
17 attorneys?

18 A. I have provided force investigation information.  
19 I have provided -- I have done presentations on the  
20 decision making process.

21 Q. What do you mean by the decision making?  
22 Decision making in what context?

23 A. In applications of force.

24 Q. Okay.

25 A. The whole picture, if you will, of the decision



1 making process. Not simply A equals B, but all the  
2 variables that go into it.

3 Also, how a force investigation differs from a run of  
4 the mill everyday investigation. And the techniques that  
5 should be considered when conducting a force -- well, what  
6 variables that should be considered in a force  
7 investigation. I know I have done weapon systems.  
8 Explaining especially the conducted electrical weapons,  
9 the TASER weapons. I've done that.

10 Q. Are these presentations designed or focused on  
11 attorney groups or are these presentations that attorneys  
12 can attend but are limited to attorney attendance?

13 A. No, I am speaking specifically to where I have  
14 done this. The only people in the audience are attorneys.

15 Q. Where have you made those presentations?

16 A. Across different places in Florida. I've also  
17 presented with national associations, like, there is a  
18 professional investigations for defense investigators and  
19 they have attorneys that come to those conferences. And  
20 then, obviously, it's through working with bar  
21 associations and the circuits of the state attorney's  
22 office and the public defender's office.

23 Q. The presentations, other than you said maybe  
24 some national associations, like, presentation for defense  
25 investors where attorneys can also attend, have your

1 presentations primarily been focused at some place in the  
2 state of Florida?

3 A. Since that was my home up until last year, that  
4 is pretty much where I focused all my energy.

5 Q. Are you aware or do you recall giving any  
6 presentations to any West Virginia attorneys?

7 A. Not specifically to an association or group  
8 specifically from West Virginia, no.

9 Q. Have you ever taken any kind of class regarding  
10 testifying as a witness?

11 A. Oh, yes.

12 Q. What kind of classes did you take? Were these  
13 classes, for instance, while you were within law  
14 enforcement or have you taken classes that provide  
15 guidance to you in how to testify as an expert, a retained  
16 expert?

17 A. It wasn't while in law enforcement. One course  
18 was a program that was presented called Testifying Made  
19 Simple. And then I attended training through -- I'm  
20 trying to think of the name of the organization. They  
21 specialize in trainings for expert witnesses providing  
22 explanations for federal rules. What needs to be included  
23 in a report and so on and so forth. And also a  
24 presentation --

25 Q. Where did you do that? Where it was kind of

1 focused on the federal rules and expert witness?

2 A. Well, the program was held on the west coast of  
3 Florida on a really nice resort. Which, apparently that  
4 is where they go for all those things.

5 I am trying to think of the organization. They put  
6 programs on across the entire country. But it is, this is  
7 going to sound egotistical and I don't mean it to. But  
8 once you hit a certain educational plateau you have to  
9 find resources to expand your understandings. In the  
10 expert realm there is not a lot of organizations that  
11 focus on expanding the understanding of the expert. And I  
12 will be darn if I can not think of the name of this. You  
13 know, as soon as this is all over I am going to think of  
14 it.

15 Q. Well, maybe it will be like when we take a break  
16 or something it will come to you like the other piece of  
17 information.

18 The Testifying Made Simple, where was that?

19 A. That was at a conference I was taking. I don't  
20 recall where it was but it was a very nice lady. She was  
21 a former prosecutor. She had a full one day class on  
22 testimony. It was also deposition preparation, so on and  
23 so forth. SEAK.

24 (Court reporter jumped)

25 THE WITNESS: I'm sorry.

1 THE REPORTER: That's okay.

2 A. S-E-A-K that's the name of the organization. My  
3 brain found it. That is the organization that provides  
4 the training and expert stuff.

5 THE WITNESS: Sorry. I get excited when I  
6 remember something. That's sad.

7 MRS. DURST: I felt like a shooted {sic}  
8 squirrel.

9 BY MRS. DURST:

10 Q. The testifying made simple, was that a one day  
11 conference you attended in Florida also?

12 A. No. That was a one -- yes, it was a conference  
13 over a long period. You get to pick, I don't remember if  
14 it was in Florida, but it was one of those conferences  
15 where you have different speakers on different days and  
16 they have them in kind of break out kind of sessions. And  
17 I just remember that one because it intrigued me.

18 Q. You have an associates degree from Indian River  
19 Community College in Criminal Justice?

20 A. Indian River State College, yes.

21 Q. Indian River, okay. What did I say?

22 A. Community college.

23 Q. So I left out the River. So it's Indian River  
24 Community College?

25 A. No. Indian River State College.

1 Q. State college. I don't know where I got the  
2 community from.

3 Q. When did you obtain that degree?

4 A. A long time ago.

5 Q. Well, lets -- was it while you were working at  
6 one of the law enforcement agencies?

7 A. Oh, yes. Yes. Yes.

8 Q. Was it while you were with Martin County?

9 A. Yes.

10 Q. Would it have been, like, shortly before you  
11 retired or would it have been earlier in your --

12 A. No. Earlier in my career.

13 Q. So probably early 2000, somewhere around in  
14 there?

15 A. Sure.

16 Q. Do you have any other degrees from any  
17 educational institution like a college, junior college, or  
18 anything like that?

19 A. Not other than Indian State College.

20 Q. Then on your CV you actually also served as an  
21 instructor through Indian River State College for a period  
22 of time?

23 A. Oh, yes.

24 Q. Why did you cease doing that?

25 A. I wanted to have a life. That was in addition

1 to all my law enforcement work. It was go to work at the  
2 sheriff's office and then teach at the academy. So it was  
3 very long. And after doing something for so long you  
4 just, you want to have something different. And there  
5 were other people that I groomed and, you know, you got to  
6 step off the top of the mountain sometimes and let  
7 somebody else take it even higher than you did.

8 Q. I said Indian River State College, is that when  
9 you were at Indian River Criminal Justice Institute from  
10 2000 to 2008? Are we talking about the same thing?

11 A. Yes. The Indian River State College is the  
12 college. The Criminal Justice Institute is the academy  
13 portion that runs both corrections and law enforcement for  
14 the college. So they are in the same entity but they are  
15 different sections.

16 Q. You did that for seven to eight years?

17 A. Oh, yes.

18 Q. Have you attended any specialized law  
19 enforcement training like the FBI National Academy?

20 A. I have attended the -- I haven't gone to the  
21 national academy because you have to be in the  
22 administration and have it signed off by an administrator  
23 to do that. I have attended the Southern Police  
24 Institute's Career Training and I also attended the  
25 Leadership for Law Enforcement Organization through the

1 International Association of Chief of Police. And that  
2 was all after law enforcement. On my own time.

3 Q. So after 2011?

4 A. Yes.

5 Q. Now, we looked at a number of the cases where  
6 you've testified and some of them were police practices,  
7 use of force, that kind of thing. Is it safe to say you  
8 were not an expert in the trajectory analysis of a bullet?

9 A. That is safe to say.

10 Q. Is it safe to say you are not capable of  
11 calculating the angle of impact of a bullet?

12 A. That would be safe to say also.

13 Q. Are you able to calculate the path of a bullet?

14 A. With the proper equipment, yes.

15 Q. But you would not hold yourself out to be an  
16 expert in that field?

17 A. No.

18 Q. Do you consider yourself to be a ballistics  
19 expert?

20 A. No.

21 Q. Do you consider yourself to be an expert in the  
22 field of shooting scene reconstruction?

23 A. No.

24 Q. Do you consider yourself to be an accident  
25 reconstruction expert?

1           A.     No.

2           Q.     Do you consider yourself to be an expert on  
3 guns?

4           A.     That's a pretty broad question.

5           Q.     Or did you focus your expertise more on various  
6 fighting tactics? Does that make sense?

7           A.     It does. I guess my hang up is, I always have a  
8 hang up whenever I refer myself as an expert on anything.  
9 But the reality is, my education, background and  
10 experience would probably qualify me for an expert in  
11 firearms because I've been to three different -- two  
12 different armorer certifications. I've got four different  
13 firearms instructor certifications on the functioning and  
14 application of firearms. So if you ask if I'm an expert  
15 in firearms, in what regard? I'm not an expert on the  
16 manufacture of a weapon, but I would consider myself an  
17 expert on its application and the decision making process  
18 and how that is associated to firearms.

19          Q.     Have you ever been retained as an expert in that  
20 capacity? Where you just said that you would consider  
21 yourself to be an expert on the application of firearms.

22          A.     Which would be in the use of force from them.  
23 So it would be -- my instructor -- well, I am sure we will  
24 get to all my background training and experience. But my  
25 instructor certification the idea is weapon systems. For



1 example, K9, I was a K9 officer and then I went and became  
2 a K9 team instructor so I could better understand the  
3 application of the weapon system. Because a dog is a  
4 weapon system. So in regards to how a weapon is applied  
5 during a force event I am very comfortable with my  
6 credentials in that arena. When you say an expert on  
7 firearms, now we are going to have to start talking, what  
8 aspect of firearms.

9 Q. I think I understand your testimony.

10 Regarding your certifications, what current active  
11 certifications do you have?

12 A. What do you mean, certifications?

13 Q. In your field of law enforcement. Are you still  
14 certified as a law enforcement officer?

15 A. No. No, ma'am. My certification -- well, I  
16 guess I should correct that. My credential in Florida is  
17 still valid, active. If I went back down and took a  
18 position with a police department my certificate, I do not  
19 believe has expired yet. Because it was just renewed. It  
20 might be coming up. We might be entering into that realm.  
21 But as far as persuing it and things like that, no, ma'am.

22 Q. Do you have any other licenses currently other  
23 than, like, a drivers license?

24 A. Notary public.

25 Q. Anything else?

1           A.    I think I'm coming up on the expiration of my  
2   professional licensing from Florida. Like, my  
3   professional investigations license and things like that.  
4   Because, again, I've closed all those doors. I can't  
5   think of any other. Even my firearms instructor's license  
6   I haven't sought it up here yet. So I don't know when  
7   that expires out of Florida. You have to get licensed for  
8   everything in Florida. And there is a concealed weapons  
9   permitting. I think you have to have a state license for  
10   being a firearms instructor. Do all their training and  
11   such. I don't know if that is expired yet or is about to.  
12   Outside of that I don't -- I can't think of any.

13           Q.    Are there any certifications that you've held in  
14   the past that you no longer hold, for any reason? Other  
15   than you are not sure, you believe your credentials in  
16   Florida may still be active, but it may be coming up to  
17   the point to where if you don't do something they might no  
18   longer be active; right. Anything else like that you have  
19   had in the past that lapsed for any reason?

20           A.    I know that I haven't renewed yet, my instructor  
21   credential with TASER Weapons Systems. Nor do I -- I am  
22   not certain that I am going to. Most other credentials,  
23   depending on the entity that you get the certifications  
24   from, if you are talking about instructor certification,  
25   things like that, some of them there is no expiration.

1 It's based on going to the training, getting the  
2 certification, passing the exams and qualifications and  
3 moving forward. But, for example, like with TASER weapons  
4 I was a master instructor with TASER International and  
5 they require renewals every three years. I can't think of  
6 any other credential that I had that's quote unquote  
7 expired.

8 Q. On your CV there are a couple of boards or  
9 things that are listed. Florida Board Certified  
10 Investigator. Are you still certified in Florida as a  
11 Board Certified Investigator?

12 A. That is yet to be determined. When I sought the  
13 credential and jumped through all the hoops and acquired  
14 it I was a licensed professional investigator. With  
15 retiring I am no longer a licensed investigator in  
16 Florida. And the initial response from the accrediting  
17 body was, well, if you are not going to be a licensed  
18 investigator you can't have this. I have filed an appeal  
19 to ask them, okay, well, what do you do when you retire.  
20 I don't, you know, cause the only thing that is listed  
21 there is to maintain it you have to maintain educational  
22 requirements. I do that. But I literally just got it  
23 renewed this year before I, or this past year before I  
24 moved. So that one right there, like, on my current  
25 updated you won't find that on there because it's in

1 limbo. I am not certain as to whether it's going to be  
2 there or not.

3 Q. So if that was in the version that we had in May  
4 of '19 it might not be on the most recent version?

5 A. Correct. I mean, I can look at that right quick  
6 and see.

7 Q. I think it was in the original CV that I had.  
8 It was on page 6.

9 A. Board certifications.

10 Q. What page are you on?

11 A. On page 5.

12 Q. Okay.

13 A. Yes. I have removed that one now.

14 Q. Are all of these --

15 A. Oh, no, wait. No, my mistake it is still there.  
16 So I am going to update that. That's -- even though I  
17 have the credential and it's not expired I am not  
18 comfortable with listing it without having the entity  
19 verify that they are going to maintain it since I am no  
20 longer licensed. This particular one is the only one that  
21 required that I maintain a state license as an  
22 investigator even though their renewal requirements only  
23 indicate you must maintain ethical standards and also  
24 educational requirements to show that you are continuing  
25 to be updated on the material.

1       The Board Certified Forensic Interviewer and the  
2 Criminal Defense Investigator I still maintain those. And  
3 also the Board Accredited Investigators Designation.

4       Q.   Other than maybe the Florida Board Certified  
5 Investigator that is in limbo, you still have all of these  
6 other board certifications?

7       A.   Correct. Yes, ma'am.

8       Q.   Is there anything that you have to do from a  
9 continuing education type perspective to maintain each of  
10 these certifications?

11       A.   Each of them have an educational requirement.  
12 Some of them are 20 hours or 20 CEUs. You know, they  
13 differ. And they have designated courses that they will  
14 accept. They can't just be, you know, I went to basket  
15 weaving 101 and it qualifies. You can get those a lot of  
16 times through attending professional conferences and as  
17 long as they offer credited CEUs they will accept them.

18       Q.   On page 5 under Board Certifications it has  
19 licensure. We talked about the license. You still list  
20 that you have a private investigation private  
21 investigative agency license in the state of Florida.

22       A.   That will have to come off.

23       Q.   Okay.

24       A.   It's up to expiring. I really thought I -- this  
25 is the 9/11 one right.

1 Q. Yeah, it says 9/11.

2 A. I will have to make that adjustment on the CV.  
3 Thank you for pointing that out. I don't know how that is  
4 still on there.

5 Q. The Private Investigative Agency State of  
6 Florida and the Private Investigator State of Florida,  
7 both of those may no longer be active?

8 A. Correct. I did not renew those.

9 Q. What about the firearms instructor? You said  
10 that one --

11 A. I don't know when that one expires. I have to  
12 look at that one. Because I am still trying to consider  
13 whether or not I even what to because I am -- I'd rather  
14 pursue one up here where I am versus maintaining a license  
15 out of a state that I'm no longer at.

16 Q. What is Security School Instructor for the State  
17 of Florida? What is that?

18 A. Another license you have to get if you are going  
19 to be providing training of any type to armed and unarmed  
20 security professionals in the state of Florida. You have  
21 to become licensed. You have to do education. You have  
22 to have certain qualifications and certifications and then  
23 you apply for licensure in the state.

24 Q. Is that still an active license?

25 A. I hope not. It's coming up on expiration if it

1 is. Because it is not my intent to renew any of my state  
2 licensing in Florida. So the fact that it's on my updated  
3 CV is just an embarrassment. So I apologize.

4 Q. We talked a little bit about being on the  
5 faculty of what I will call like a generic police academy.  
6 That was while you were with the Indian River Criminal  
7 Justice Institute?

8 A. Yes.

9 Q. When is the last time you served in that role?  
10 Do you have the date on there as well for that? Yeah. So  
11 2000 to 2008 do you know why did you leave that again?

12 A. Well, as the lead -- I was the lead instructor  
13 for both corrections and law enforcement for defensive  
14 tactics. In other words, I coordinated the programs. I  
15 scheduled the instructors. I worked with administration  
16 on the curriculum being presented. The state gives us a  
17 very large menu to choose from and then certain academies  
18 may select, for example, one of the biggest techniques  
19 removed from most academies was vascular restraints and  
20 straps to the side of the neck. When I became the lead  
21 instructor we fought back because it is not a bad  
22 technique, it is bad instruction. So as the lead  
23 instructor, the lead instructor for defensive tactics my  
24 life was very packed. I had obtained everything I could.  
25 I had taken, the way I saw it, I had taken my role in the

1 academy as far as I could. And it was time to step down.

2 Q. At that same time did you have any of your  
3 consulting businesses?

4 A. Yes.

5 Q. Aside from the academy what consulting work were  
6 you doing at that time?

7 A. I don't remember if that was back -- I think  
8 Tactical Advantage Solutions is one that I had back then.

9 Q. While you were with the Indian River Criminal  
10 Justice Institute was there ever any issue with you using  
11 college resources or facilities for your consulting  
12 business?

13 A. No, that was Mr. Lawson, who was at the time the  
14 director, he is not there anymore. He made the allegation  
15 falsely because of another administrator at the sheriff's  
16 office that didn't like the fact that I was actually  
17 having a successful side business. The course that he  
18 tried to make that issue about was approved through the  
19 administrator of the academy and presented, at the  
20 academy, marketed through the academy and had nothing to  
21 do with me running my company through that. That is a  
22 bunch of crap that some political individual, because of  
23 another connection, wanted to start.

24 Q. Did anybody within the college or the academy  
25 raise that with you as an issue?



1           A.     We had many a meeting on that. It was brought  
2 to my attention. First it was Mr. Barry who said that  
3 there was an issue and I said, no there's not. We went  
4 through all of the approval processes. The gentleman who  
5 was responsible for it, his name was Kevin Lapham,  
6 L-A-P-H-A-M. He coordinated and organized getting the  
7 program there. Everything was approved through him. He  
8 was the person under Mr. Lawson that was required to  
9 organize and coordinate all of that stuff. As a matter of  
10 fact, this brings up a painful memory, so thank you for  
11 reminding me.

12           Q.     You're welcome.

13           A.     Mr. Lawson, when I separated, it was actually  
14 Lawson had told Mr. Barry that they weren't going to  
15 schedule me because I was now not the lead instructor I  
16 was the support instructor. He said they were no longer  
17 going to schedule me. I asked him specifically, are you  
18 terminating me and his answer immediately was, no, you are  
19 not being terminated we are just not going to schedule you  
20 for a while because of this issue. I am like, there is no  
21 issue I met with Mr. Lawson and had an exchange of words  
22 with him in the privacy of his office. That was the end  
23 of the relationship with them.

24           Q.     Kind of going back to that, you told me you were  
25 the lead instructor for Defensive Tactics and one of the

1 things I think I wrote down was you scheduled the various  
2 instructors. Did you also present as well or were you  
3 just lining up the instructors?

4 A. Oh, no, I presented and taught.

5 Q. Have you served in any branch of the military?

6 A. The army for a short period of time.

7 Q. When did you serve in the army?

8 A. 1986.

9 Q. Were you discharged?

10 A. Medical.

11 Q. What was, just generally, the reason?

12 A. Flat feet.

13 Q. Have you authored any peer review paper related  
14 to any subject matter that's discussed in your report?

15 A. No.

16 Q. What about training materials?

17 A. Have I authored training?

18 Q. Authored training materials that are related  
19 specifically to any subject matter that is discussed in  
20 your report?

21 A. Sure.

22 Q. Are these training materials that you have  
23 prepared for providing training to various groups and  
24 organizations that maybe have retained your Tactical  
25 Advantage business?

1           A.     Not for law enforcement.

2           Q.     I note in your report I think you reference the  
3     US Supreme Court's case in *Graham v. Connor*.

4           A.     *Graham v. Connor*.

5           Q.     Yes. It starts off the first part of your  
6     opinion. My question is, I don't see reference to any  
7     other kind of outside research for material. So my  
8     question is, did you rely on any research, legal research,  
9     any articles or anything outside of the documents provided  
10    to you by counsel to formulate your opinions?

11          A.     Well, the evaluation outside of my background  
12    training experience, the decision in *Graham v. Connor*  
13    obviously, *Tennessee v. Garner*, which I know you are  
14    familiar with, Mr. Faulkner mentions in his report, those  
15    are the ultimate variables associated with whether  
16    something can be determined or deemed to be objectively  
17    reasonable. So those would be the guiding variables that  
18    I would have used for forming that particular opinion,  
19    which is number one.

20          Q.     Your report doesn't reference *Tennessee v.*  
21    *Garner*. Is there a reason it is not referenced in your  
22    report?

23          A.     When I didn't reference that, because *Tennessee*  
24    *v. Garner* is essentially the fleeing felon rule. In this  
25    particular matter I did not consider, based on testimony

1 and documents provided, that Mr. Rhoades was a quote  
2 unquote fleeing felon at the time of the use of force. It  
3 was alleged that he was actively involved in a force event  
4 against the officer. Against the deputies. I felt that  
5 the application of *Graham v. Connor* was more appropriate  
6 given the situation and the circumstances. *Tennessee v.*  
7 *Garner* just talks about the circumstances surrounding when  
8 an officer can justifiably use deadly force in the  
9 performance of their duties. And *Graham v. Connor* goes  
10 much deeper and talks about the objective reasonableness  
11 and establishes criteria that needs to be met and  
12 considered when evaluating a force event.

13 Q. So just to kind of make sure I understand. You  
14 didn't mention *Tennessee v. Garner*. One of the reasons in  
15 your report is, you did not believe at the time of the  
16 application of the force that Mr. Rhoades was a fleeing  
17 felon?

18 A. I said I did not view him as that. He,  
19 depending on which statement you are looking at, they  
20 either knew or didn't know it was Mr. Rhoades. They  
21 either knew or didn't know he had active warrants. But in  
22 reviewing, and I was asked to evaluate the use of force.  
23 In reviewing their statements and the information provided  
24 through the course of Mr. Branham's investigation, felt  
25 that the *Graham v. Connor* decision was more appropriate to

1 cite.

2 Q. So we've discussed *Graham v. Connor* and then  
3 *Tennessee v. Garner*, my question is, was there any other  
4 article or research paper by any other expert in the field  
5 of use of force that you refer to or relied upon to  
6 formulate any opinions in this case?

7 A. Are we talking about just the first opinion?

8 Q. No. With regard to any of the opinions. I want  
9 to know, did you go out and look and do and read any  
10 articles or publications from any treatise or anything  
11 like that to formulate any of the opinions in the case?

12 A. As a certified analysis through For Science I  
13 utilized the information that I've gained through my  
14 background training experience and the certification and  
15 the trainings that I have received through For Science.  
16 As the underlining references for forming opinions. It's  
17 applicable, I guess, you know, in learning as I go here  
18 and after seeing Mr. Faulkner's report, perhaps I should  
19 include every single thing that I have ever read on a  
20 particular issue or incident. And in this particular  
21 matter I have all of those behind me. I do have the  
22 certification behind me through For Science where it is a  
23 part of my background training experience in evaluating  
24 and assessing a force taking into consideration distances,  
25 perceptual opportunities. The process is the ability to

1 see so on and so forth. And I applied all that  
2 information to forming my opinions in this particular  
3 matter. I guess, I would just have to say that it would  
4 be my failure not to include each one of those things that  
5 are found applicable.

6 Q. And you mentioned Mr. Faulkner's report. He  
7 does cite materials outside of materials in this cases;  
8 right?

9 A. Yes.

10 Q. And so my question is, I think I understand what  
11 you are saying, is you may have had training and had that  
12 knowledge but you didn't actually go and pull any piece of  
13 paper or any online source to assist you as you were  
14 preparing your report?

15 A. No. I'm saying I did. And I used the  
16 materials. Cause, like for example, the materials that  
17 Mr. Faulkner said that he included with his report, even  
18 the ones that he didn't include that he said he included,  
19 I have the originals and I also have the updated studies.  
20 So what I was saying about my failure is, I guess I could  
21 have included each of those as I am reviewing and  
22 considering what somebody could or could not see and  
23 taking into consideration I am using that information in  
24 the formulation of my opinion. I guess I mistook that my  
25 background training experience and having those

1     certifications and being able to explain the concepts and  
2     the reference materials was enough. I didn't realize that  
3     I needed to, and again, this is completely my fault,  
4     needed to include every one of the studies that may have  
5     influenced my ability. It's kind of like building a  
6     house. Once you know how to frame a wall and then you go  
7     on to stucco and things like that, you may not always  
8     remember to go back and tell how you remembered how to  
9     frame a wall. You know how the wall was framed.

10        Q. I guess my question is more specific. If you  
11     are building that wall did you look at plans to build that  
12     wall as you were building the wall. That is what I am  
13     trying to find out. I know you were trained on these  
14     materials, but as you were preparing the report did you go  
15     out, did you pull something, read it as you were preparing  
16     your report but maybe not cite it in your report. Does  
17     that make sense?

18        A. Yes. That's what I was just trying to say that  
19     I did. And that's my failure if I didn't incorporate each  
20     of the -- for example, that first opinion. The  
21     perspective of whether something is considered to be  
22     objectively reasonable. Given the facts and circumstances  
23     surrounding the event based on the information provided  
24     through the investigation. Taking in all the training  
25     that I've had and the resource and reference material that

1 I have at my immediate disposal. I formed an opinion and  
2 at the time I didn't see how, even though I had this at my  
3 disposal and I understand it and I read it, I didn't  
4 recognize I needed to now pull that out because my ability  
5 to articulate and explain it I felt was what needed to be  
6 done. So I guess in the future, and I would be more than  
7 happy to pull out the ones that I did consider and  
8 anything that I have done and forward them.

9 Q. That's going to be one of my questions is, what  
10 resource or reference material did you rely upon to  
11 formulate the opinion. So if you can provide that  
12 information.

13 A. Are you speaking on opinion one? Because I know  
14 you identified opinion one.

15 Q. All of the opinions. Any opinion set forth in  
16 the report that you authored in this case if there is any  
17 resource or reference material that you reviewed or relied  
18 upon to formulate those opinions, I would like to have  
19 that information.

20 A. No problem whatsoever.

21 Q. Okay.

22 A. It will take me -- I will have to look at the  
23 opinions or as we go through them I will be able to  
24 identify.

25 Q. Have you discussed any topic that is set forth



1 in your report? I believe you have an Apple Podcast?

2 A. I do.

3 Q. Have you discussed any of the topics set forth  
4 in this report specifically on your Apple Podcast?

5 A. No. I don't address cases, unless they are  
6 closed.

7 Q. At some point did Dennis Root & Associates  
8 subcontract out certain aspects of your expert witness  
9 work?

10 A. Yes.

11 Q. Does Professional Training Investigations  
12 Training Council subcontract any work out?

13 A. No.

14 Q. So did you consult with anyone to formulate any  
15 of the opinions in this case?

16 A. No.

17 Q. Did anyone other than yourself have any  
18 involvement in the review of any of the material?

19 A. No.

20 Q. When you had Dennis Root & Associates what kind  
21 of expert witness work, or aspect of expert witness work  
22 would be subcontracted out?

23 A. Things that aren't in my wheelhouse. For  
24 example, somebody was looking for a fingerprint expert. I  
25 had a gentleman that I worked with, he worked with my

1 company that I would subcontract the work to him. But  
2 only very little actually happened because I got to the  
3 point it just wasn't worth the headache of trying to  
4 maintain all the files for work that I wasn't performing.

5 Q. Did anyone have any assistance at all in  
6 drafting the report for you?

7 A. No.

8 Q. Did you have any peer review of the report  
9 before you provided it to counsel?

10 A. Peer review.

11 Q. Yeah. Like another expert in your field --

12 A. No.

13 Q. -- do any review of the report?

14 A. No.

15 Q. Now, you were first contacted in this case,  
16 well, it says date retained of July 13, of 2018. And  
17 later in the report it indicates that, I think it says  
18 that is when the -- I don't want to misquote the language.  
19 The professional service agreement was executed or  
20 something to that effect. Do you remember that?

21 A. Yes.

22 Q. On July 13th I signed fully executed agreement  
23 for expert witness services. And so just to be clear that  
24 agreement for expert witness services would have been  
25 signed at the time you still had Dennis Root & Associates:

1 A. Correct.

2 Q. So if you signed the agreement on July 13th,  
3 when were you first contacted about the case?

4 A. I don't know. You are talking about the first  
5 time they called me just to give me --

6 Q. Yes.

7 A. I have no idea. Before the 13th.

8 Q. Do you know, was it a significant period of time  
9 before you actually signed the agreement?

10 A. I don't know.

11 Q. How were you contacted?

12 A. By phone.

13 Q. Do you recall who contacted you?

14 A. I believe it was Bryan that contacted me.

15 Q. Based on the case list that we've gone over and  
16 your recollection of other cases in West Virginia, I  
17 assume I know the answer to this question but I have to  
18 ask, have you had any other cases with either Mr. Edwards  
19 or Mr. Umina?

20 A. No.

21 Q. Do you have any other cases pending with either  
22 of their firms?

23 A. No.

24 Q. When you were first contacted even though you  
25 don't recall specifically when, do you recall what

1 information you were provided?

2 A. No.

3 Q. When you were first contacted, in between when  
4 you were contacted whenever that was, and when you signed  
5 the retainer agreement were you provided documentation to  
6 review?

7 A. Before I signed the agreement?

8 Q. Yeah. Between when you were contacted and when  
9 you signed the agreement.

10 A. I wouldn't have reviewed it. So the answer  
11 would be no.

12 Q. Maybe I just misunderstood your answer or you  
13 misunderstood my question. You were contacted at some  
14 point and then you signed the retainer agreement?

15 A. Correct.

16 Q. Between, in that time, did you receive any  
17 information about the case? Like documents anything like  
18 that?

19 A. No. Without a retainer and the signed service  
20 agreement, I don't perform services.

21 Q. So other than information that would have been  
22 provided to you over the telephone, that is all the  
23 information you had when you agreed to serve as an expert?

24 A. Yes. And I think, thinking back, I think the  
25 information that I had was, there was obviously a use of

1 force by law enforcement and that it was a shooting case.  
2 I am certain they gave me an overview because I asked  
3 questions about, well, how many people are involved. You  
4 know, what were the essential elements of the case. But I  
5 don't make records of them because one, they are times  
6 when people don't call back once they hear that I am very  
7 strict on how I do my cases. And secondly, I have learned  
8 now through experience that if you haven't retained me  
9 there is nothing I can do for you. But I make it very  
10 clear to everybody that contacts me retaining me doesn't  
11 mean you don't have an opinion that you like.

12 Q. When you were contacted and then had the signed  
13 retainer agreement, what specifically were you asked to  
14 do?

15 A. I was asked to review the application of force  
16 in this particular matter and also to evaluate it and  
17 determine from my perspective whether the actions of those  
18 involved were appropriate. And also relative to the  
19 training associated with the application of force.

20 Q. So you were asked to review, to take a look at  
21 the application of force to determine if the actions were  
22 appropriate and to review the training in relation to the  
23 application of force?

24 A. Yes.

25 Q. Prior to the deposition this morning I know you

1 had an opportunity to meet with counsel. Had you had any  
2 consultations with them or conversations over the  
3 telephone or in person to prepare for the deposition?

4 A. We've spoken on the phone. And we've  
5 communicated via e-mail. As far as preparing for the  
6 deposition, I prepare for my depositions. I don't know  
7 what you mean as far as having them prepare me for  
8 deposition?

9 Q. Sit down and have a discussion over the types of  
10 questions that you might be expected to be asked in the  
11 deposition, anything like that?

12 A. No. I don't believe they explained any of that.  
13 They were very complimentary about you. I do recall that.

14 Q. Don't try to suck up.

15 A. Worth a shot.

16 Q. Do you have a process that you go through when  
17 you are being asked to give a deposition that you do to  
18 prepare for a deposition?

19 A. Yes.

20 Q. What is that process?

21 A. I review the documentation -- well, obviously I  
22 review the documentation before I make my reports. So  
23 prior to the deposition I review my report. I review key  
24 elements of the investigation whether it be statements  
25 made by witnesses or the officers or whoever. And I just

1 do a review of my materials. Because like I said, I  
2 highlight stuff in here. And then when I do my report  
3 review if I can't recall who said it or whatever I will go  
4 back to my documentation just to look it up and say where  
5 did I get that. Or if I find something that I now see as  
6 -- for example, just recently I got Mr. Faulkner's report,  
7 I had to scramble to get through stuff and to look at what  
8 he had and then spend time trying to go back and look at,  
9 wait a minute, because I honestly consider everything and  
10 if he had presented something that, that makes sense and  
11 made an adjustment, I would make sure that was reflected  
12 in what I do.

13 Q. And when you say, just recently received, that  
14 was the supplemental report?

15 A. Yes, ma'am. Yes, ma'am.

16 Q. I'm going to go ahead and mark a copy of your  
17 report. I don't want to mark the one that I have written  
18 on. And I am going to show you, Mr. Root, just to make  
19 sure. Take a look at that if you would. We will mark  
20 that as the next exhibit. But make sure that I have what  
21 is reflected as a complete copy of your report.

22 A. Yes.

23 Q. Okay. So we will go ahead and have the court  
24 reporter mark a copy of this. The next exhibit. And do  
25 you have a copy of the report in front of you?

(Deposition Exhibit 2 marked and identified)

A. Yes.

Q. Since you have confirmed that is in fact the report, if you want to refer to the one that is in front of you.

MRS. DURST: I will go ahead, madam court reporter, and lay both of these or you let you have those so I don't take them.

THE REPORTER: Okay.

BY MRS. DURST:

Q. The report that we have marked then is --

MRS. DURST: What was it, Exhibit 2?

THE REPORTER: Yes.

BY MRS. DURST:

Q. My understanding is that is the only written report that you have prepared thus far?

A. Thus far.

Q. Have you been asked to prepare any other reports?

A. Not yet. No.

Q. And again, safe to say that at this point in time as of September 17, of 2019 you have not prepared any report or document that critiques or criticizes any opinions of Mr. Faulkner?

A. Not at this point. Whether I will or not,



1 especially since I just got his most recent one where he  
2 added opinions and such, I reserve the right to do that.  
3 It's just there hasn't been enough time permitted for me  
4 to be able to complete that review, consider it, find the  
5 treatise and information as you have so pointed out that I  
6 should really include. So it's not that I am not going  
7 to, it's just that I have not had that opportunity at this  
8 point.

9 Q. With regard to his initial report it was filed  
10 with the federal court July 1st, of 2019 and counsel would  
11 have had that at that point in time. So from around the  
12 1st of July of 2019 up until the present, you have not  
13 prepared or authored any document critiquing the initial  
14 report from Mr. Faulkner; correct?

15 A. The initial report, correct. Because I figured  
16 that the small critiques that I have for his initial  
17 report could be cleared up in deposition.

18 Q. You did mention, actually it is in page 10 of  
19 your report, you reserve the right to amend your opinions  
20 as needed to rebut the opinions set forth by opposing  
21 counsel's expert. Until you received the supplemental  
22 report you had not prepared any written report to rebut  
23 any opinions set forth by opposing counsel's expert;  
24 correct?

25 A. That is correct.

1 Q. Other than I suppose any criticism that you  
2 might have of the supplemental report that you received  
3 from Mr. Faulkner, are all the opinions that you have  
4 formulated in this case set forth in your initial report?

5 A. As they stand at this moment.

6 Q. You have not supplemented anything to counsel;  
7 is that correct?

8 A. Not yet. I am still waiting to receive  
9 materials before I can give a final that this is -- they  
10 are not going to adjust because I have requested a lot of  
11 the documents that I have been provided.

12 Q. With regard to the preparation of the report,  
13 based on the documents you have reviewed at that point in  
14 time, you set forth all the opinions in that report that  
15 you have formulated at that time?

16 A. Based on what I have received to this point,  
17 yes.

18 Q. You recognize that the reports in cases like  
19 this are produced so other parties like me can know what  
20 your expected opinions for trial would be; right?

21 A. Absolutely.

22 Q. You understand that the reason you are obligated  
23 to provide those opinions is a matter of fairness to all  
24 parties in the case?

25 A. Absolutely.

1 Q. You would agree that we should be able to look  
2 at your report and know what opinions you would provide at  
3 trial; correct?

4 A. Yes.

5 Q. The report as of May the 15, of 2015. It listed  
6 items that you had --

7 MR. EDWARDS: I'm sorry. You said 2015.

8 MRS. DURST: 2019. I'm sorry.

9 BY MRS. DURTS:

10 Q. The report listed the material that you had  
11 reviewed at that point in time; is that right?

12 A. Yes.

13 Q. Page 2 and 3?

14 A. Yes.

15 Q. Now, again just to be clear. All of the  
16 documents or audio or any video, you reviewed those  
17 materials yourself?

18 A. Correct.

19 Q. Since you were contacted, I will represent to  
20 you before I believe the actual complaint in this case was  
21 filed, did you ever review the complaint before it was  
22 actually filed with the court? I know you have the  
23 initial complaint. My question is, did you review it  
24 before it was filed with the court or after?

25 A. I don't know when it was filed. I don't think

1 so. I don't even think anything really started happening  
2 until after I was retained. But that, I would have to  
3 look at what I was given versus when it was filed. I  
4 don't know.

5 Q. You told me that as you are reviewing all these  
6 documents you don't take notes. You may highlight  
7 something but you don't actually take notes?

8 A. That's correct.

9 Q. Now, I wanted to ask you. The dashcam video,  
10 it's listed as an audio file.

11 A. The dashcam video?

12 Q. Yes. On page 3 of your report there is a  
13 section that says audio files and it's numbers 33, 34, and  
14 35. And then there is a video section that says 36 and  
15 37. See number 35, it says dashcam video of 7/25/17?

16 A. Yes. That would just be an alignment error.

17 Q. So it should have been an actual video that you  
18 reviewed?

19 A. Yes. Of the pursuit, yes.

20 Q. The week prior?

21 A. Yes.

22 Q. I just wanted to make sure that there wasn't  
23 something that I was not aware of.

24 A. It is supposed to be one level lower than it  
25 actually is.

1 Q. Since the preparation of your report you have  
2 had to opportunity to review Mr. Faulkner's initial report  
3 and the supplemental report?

4 A. Yes.

5 Q. You understand or do you have an understanding  
6 that Mr. Faulkner's supplemental report was based on  
7 documents that he reviewed that were generated after he  
8 had prepared his initial report?

9 A. Yes.

10 Q. Okay.

11 A. And I'd like to back up. When you mentioned I  
12 don't take notes, because I don't want to misinform you.  
13 My report is my notes. When I highlight something and I  
14 make note I actually take the note and turn them into the  
15 report. So everything that is in the notes is actually in  
16 the report.

17 Q. But for instance you don't write hand written  
18 notes as you're highlighting things?

19 A. No.

20 Q. Or have a legal tablet like I have in front of  
21 me where you are writing notes?

22 A. No.

23 Q. I wanted to ask you. Number 32 just says  
24 Exhibit A 791 pages, do you recall what that was?

25 A. I provide them to the best of my ability with

1 the way that I receive them. And 791 pages that would  
2 have been, there is a lot of duplicates from other  
3 sections and I don't take the time to break out each one  
4 for a second time and things like that. So if it is  
5 provided to me as Exhibit A and its got 791 pages, I try  
6 to identify well, this was provided as Exhibit A and this  
7 is how many pages are in it. For example, if you go to  
8 that drive you will find Exhibit A and it will have 791  
9 pages on it.

10 Q. So we should be able to figure out what Exhibit  
11 A is referring to?

12 A. Without question.

13 Q. The only reason that I am asking is, when I  
14 provided responses on behalf of my client we had a number  
15 of exhibits. I think all the way up through, maybe, G or  
16 H or something like that. So I am just trying to figure  
17 out if Exhibit A is something that was provided as part of  
18 my discovery of Exhibit A or if it was something that was  
19 provided to you by plaintiff's counsel. You don't know as  
20 we sit here today?

21 A. That's why what you see here you will find on  
22 those drives.

23 Q. In addition to both of Mr. Faulkner's reports,  
24 what other documents have you reviewed since May the 15th  
25 of 2019?

1           A.     Now, there have been the autopsy report. The  
2 videotape and transcript of the deposition on Detective  
3 Forsyth. There is the video recording of the deposition  
4 with Deputy, or former Deputy Love. Also the supplemental  
5 report submitted by Mr. Faulkner. And I believe off the  
6 top of my head that's it. I haven't documented --

7           Q.     Let me ask you this. You mentioned that you  
8 just recently received and reviewed the autopsy report.  
9 Do you understand that it was the plaintiff's attorneys  
10 that actually produced the autopsy report in discovery in  
11 this case?

12          A.     Okay.

13          Q.     Well, I guess my question is, do you know why,  
14 if you didn't review it, why you didn't have the autopsy  
15 report when you prepared your initial report?

16          A.     Well I would imagine it was because it was an  
17 oversight on their part. But as soon as I requested it,  
18 it was provided immediately.

19          Q.     How did you know to request that? Because you  
20 saw reference to it in Mr. Faulkner's report?

21          A.     No. When I started really evaluating and  
22 considering the information and when Mr. Faulkner in his  
23 supplement articulated the movement behaviors, potential,  
24 he used a possibility for how the vehicle got out of gear.  
25 It triggered a thought in my mind that, well, wait a

1 minute the injury is sustained. Is it possible. I want  
2 to know if it is possible because there is information  
3 provided. And just like the other portion of my report  
4 that you didn't read, which is if new information becomes  
5 available to me not just contrary to their defenses  
6 expert. But I wanted to know more about the potential  
7 injury. So that is why I requested the report for the  
8 autopsy.

9 Q. I guess the question that I have is, you  
10 obviously at the time reviewed the autopsy photographs  
11 because they are listed in your report; right?

12 A. Yes.

13 Q. Why at that point on May the 15th before you  
14 finalized your report, why didn't you ask to see a copy of  
15 the autopsy report at that time?

16 A. At that particular moment it didn't seem like it  
17 was an influencing variable to me. I am not saying that  
18 it is not relevant. It is just not something that was in  
19 the forefront of consideration given the information that  
20 was provided by the investigation and all the other  
21 resources that I received.

22 Q. Did you review the family members deposition  
23 transcripts?

24 A. Yes. There was a gentleman -- wait a minute. I  
25 don't, let me look on my list because there were certain



1 transcripts that -- or certain things that I wasn't --  
2 didn't apply to what I was investigating -- or not  
3 investigating, what I was reviewing.

4 Q. I will represent to you that the depositions of  
5 all the family members were taken after you would have  
6 authored your report. So my question is, after May the  
7 15th, 2019 you told me you reviewed the transcript and the  
8 video of Deputy Forsyth and former Deputy Love; right?

9 A. Yes.

10 Q. There were four family members of the Rhoades  
11 family that were deposed, were you provided their  
12 deposition transcripts to review?

13 A. No.

14 Q. Were you provided the deposition transcript of a  
15 gentleman by the name of Carl Straley?

16 A. The investigator?

17 Q. Yes.

18 A. Yes.

19 Q. You were provided his?

20 A. Oh, yes.

21 Q. Is there anything else since May the 15th, 2019  
22 that you have been provided to review that we have not  
23 discussed?

24 A. Not that I can recall. No.

25 Q. Is there anything that you have reviewed since

1 May the 15th, 2019 that has caused you to change or  
2 supplement your opinions?

3 A. Reinforce them, not change them.

4 MR. EDWARDS: Definitely just so we are  
5 clear. I believe he has received the troopers deposition.

6 A. Oh, yes.

7 Q. McDougal?

8 A. Yes. Yes. McDougal, yes. I'm sorry. Yes,  
9 that's right.

10 Q. You do recall receiving and reviewing both  
11 members of the West Virginia State Police and Carl  
12 Straley?

13 A. Yes.

14 Q. But not the family member depositions?

15 A. No. Not that I don't remember. I did not  
16 receive them or ask for them.

17 Q. Fair enough. On page 3 of your report number 28  
18 says, "Professional Investigator work product 14  
19 pictures." Do you see that?

20 A. Twenty-eight. Yes. Yes.

21 Q. Are those the photographs that were taken by Mr.  
22 Straley?

23 A. Yes.

24 Q. What if anything do you think that the spent  
25 casings added to the West Virginia State Police

1 Investigation?

2 A. He didn't consider the casings.

3 Q. But what if any thing -- do you think it would  
4 have changed the outcome of the investigation?

5 A. Well, I think that when you look at how the  
6 investigation was conducted, the casings in and of  
7 themselves, by themselves don't necessarily represent  
8 exactly what took place and where an officer was standing.  
9 There's a variable. The casings and where they were  
10 located were never documented. They could be used in  
11 combination with questions. For example, how were you  
12 standing, where were you standing, how were you holding  
13 the gun. Was it a two handed grip. There is a litany of  
14 questions that were never asked. Was never investigated  
15 in this particular matter. And the casings, depending on  
16 the information being presented during that questioning  
17 could have either supported or raised additional  
18 questions.

19 Q. So is it fair to say that is more criticism you  
20 have about the extent or nature of the investigation  
21 conducted by the state police? That they didn't locate  
22 these casings so they didn't have that information to use  
23 to question Deputy Love or Deputy Forsyth?

24 A. No. I don't want to misinform you. He didn't  
25 document the original casings he did find.

1 Q. Okay.

2 A. So the addition of additional casings, you never  
3 consider the casings to begin with. So the addition of  
4 additional casings doesn't add to it because you didn't  
5 consider it. So it is a matter of, if you are doing a  
6 force investigation and assessing and evaluating a scene  
7 in its entirety and you are looking at bullet alignment,  
8 trajectories, things like that. How somebody could be  
9 standing. Where they could be standing. How the round  
10 enters a vehicle. Direction. All of these variables that  
11 come into conducting the force investigation your location  
12 of the casings could help support information derived from  
13 other evidence and information. Like I said, and even Mr.  
14 Faulkner mentions in his supplemental report, and as a  
15 matter of fact, on there you will find the study that was  
16 done for a casing location. It was actually not just  
17 through For Science, but depending on the information you  
18 gain from the officer, stance, grip, posture, all these  
19 things, those can be supported by casing placement.

20 For example, if an officer is standing in a standard  
21 position, two hand grip, fully extended, and discharging  
22 his firearm, 97 percent, 96, 97 percent of the casings  
23 will eject to the right and rear. However, the moment  
24 that the weapon is being moved, canted, angled, anything  
25 like that, that influences where the casings may lead. If

1 you have never even thought about the casings even to the  
2 point that you document their placement on a crime scene  
3 diagram you never gave any consideration to it. So, no,  
4 finding additional casings can't add to the investigation  
5 because they were never a variable investigated to begin  
6 with.

7 Q. So you have a criticism of the state police  
8 about the way that was investigated?

9 A. No. I answered your question about whether or  
10 not those casings would influence something.

11 If they would have asked the questions, could the  
12 casings positions influence the investigator, yes.

13 Q. And you are saying if they ask the question. So  
14 you take issue with the fact that these questions were  
15 never asked because they didn't document where the  
16 original casings that they found were located; right?

17 A. Well, this was not critically evaluated or  
18 assessed as an investigation. This was uncritically  
19 accepting versions of an event without actually paying  
20 attention to physical evidence present at the scene that  
21 would either prove or disprove information being provided.

22 So the fact that he did not investigate the casings or  
23 consider them as any part of his force investigation  
24 involving an officer involved shooting, the addition of  
25 additional casings or the location of additional casings

1 is a mute point.

2 Q. And my question was broader at that point other  
3 than focusing on the additional casings located by  
4 Mr. Straley. My question was, you take issue with the way  
5 that the West Virginia State Police conducted the  
6 investigation; true?

7 A. Oh, I have no doubt that the investigation could  
8 have been better conducted.

9 Q. With regard to the location of the additional  
10 casings then, what if anything about the location of those  
11 additional casings determines anything about the way the  
12 shooting occurred?

13 A. As they stand right now, nothing.

14 Q. Okay.

15 A. Because there is not enough information to even  
16 use as a reference.

17 Q. With regard to documents in this case, I believe  
18 there was one reference in your report. Were there  
19 documents you asked to review that you were not provided?

20 A. Yes.

21 Q. On page, I think it's, I didn't write the page  
22 down. You noted that you requested items for review that  
23 were not provided by opposing counsel. And I am trying to  
24 remember --

25 A. That would have been the last two opinions.

1 Q. But I am -- that direct quote is what I am  
2 trying to figure out, where that came from.

3 A. I will be happy to help you. I think it was  
4 opinion three.

5 Q. Actually it is on page 10 of your report in the  
6 Professional Opinion the very top of the page.

7 A. Maybe I iterated it back there too. Sorry.

8 Q. It is the third full sentence. "It is important  
9 to note I requested items for review that were not  
10 provided by opposing counsel. Their failure to produce  
11 the requested information forced me to form opinions based  
12 solely on the information I was given." Did I read that  
13 correctly?

14 A. Yep.

15 Q. So specifically what information were you  
16 requesting that was not provided?

17 A. Training related information associated with the  
18 training provided related to vehicle pursuits related to  
19 performing high risk stops or felony traffic stops. The  
20 training associated with this type of event.

21 Q. Is there any other item or material that you  
22 requested to review that you were not provided?

23 A. The pursuit policy, I think, was not provided.  
24 I did eventually get a complete copy of the use of force.  
25 I think predominantly, it was the training. There was no

1 training materials provided. There was nothing to show  
2 that the officers were even given training or provided any  
3 documentation to support that they read or received the  
4 policies. I do know that in the depositions they  
5 indicated that they had received them. And with the new  
6 administration I guess took office that year but it was  
7 the training related information. Because that's what it  
8 came down to is, without documentation, you know, in the  
9 law enforcement world if it is not written down, it didn't  
10 happen. If there is no documentation of training,  
11 training didn't occur.

12 Q. We will talk about that when we talk about the  
13 other opinions, then. But is there any --

14 MR. EDWARDS: I'm sorry. I need to take  
15 another break when you get a chance.

16 MRS. DURST: Absolutely.

17 (Off the record)(12:42 p.m.)

18 (Back on the record)(12:44 p.m.)

19 BY MRS. DURST:

20 Q. So with regard to any other materials, is there  
21 anything else you can think of that you would have wanted  
22 to review that was not provided other than training  
23 materials?

24 A. Well, I guess it is still training materials.  
25 Anything from the West Virginia State Police on how they



1 conduct training for their new officers or for their  
2 academy. As well as I requested a full resource access to  
3 the STOPS book that Mr. Faulkner references because it is  
4 not readily available in print anywhere. I like to read  
5 the entirety of a section not just pieces taken out if  
6 possible. And you can't find it anywhere.

7 Q. Who did you make the request to for the STOPS  
8 material? Did you request counsel --

9 A. Oh, I am sure I submitted -- requested it to  
10 them.

11 Q. Did you ask counsel to see if they could obtain  
12 documents from the West Virginia State Police Academy  
13 regarding the training that the new cadets are provided?

14 A. Yeah.

15 Q. What were you told?

16 A. They are in the process and they are trying to  
17 get it.

18 Q. Regarding the executive summary that is set  
19 forth on page 9 of your report.

20 A. Yes.

21 Q. It refers to the fact that Mr. Rhoades was  
22 operating a 1999 Jeep Wrangler at the time. You see that  
23 kind of near the beginning of the executive summary?

24 A. Yes.

25 Q. And then it is discussed, obviously, later on

1 throughout your report as well. Your report doesn't  
2 mention any place that particular Jeep was stolen. Is  
3 there a reason why?

4 A. No.

5 Q. Is there a reason why your report doesn't  
6 mention that Jeep was actually that the original color was  
7 red and the state police report indicated it had been  
8 spray painted black?

9 A. Because there was no indication as to whether or  
10 not it was actually Mr. Rhoades that spray painted it. It  
11 was never asked of the owner if he had changed the color  
12 of it. And the color of the vehicle, when it comes to the  
13 use of force, if an officer has to protect them self the  
14 color of the car is irrelevant to me.

15 Q. Is there any reason that you didn't mention that  
16 the license plate that was on the Jeep was not the license  
17 plate associated with the Jeep? Meaning it was also  
18 stolen.

19 A. It had no bearing on the information that I was  
20 provided.

21 Q. The second sentence in that executive summary,  
22 and I am assuming maybe this is a typo. It says, "persing  
23 {sic} deputies. Is that supposed to be persuing deputies?

24 A. That would be a much better word in that  
25 sentence. Yes.

1 Q. That's what I thought. It says, "persuing  
2 deputies lost sight." Well, it says persing, but it  
3 should be persuing deputies.

4 A. Persuing. Yes.

5 Q. "Lost sight on the jeep and saturated the area  
6 with personnel." Did I read that correctly with the  
7 insertion of persuing versus persing?

8 A. Yes.

9 Q. When you say saturated the area with personnel,  
10 how many units?

11 A. There were multiple units.

12 Q. So you know the number?

13 A. No. I got the impression from the readings that  
14 there was many units looking for -- and saturated being  
15 relative because some agencies only have three people on  
16 an area. Some people have ten. It really depends on the  
17 number of people available.

18 Q. You told me most recently that you have reviewed  
19 the toxicology report that is part of the autopsy report;  
20 right?

21 A. That's correct.

22 Q. But you had not reviewed it at any point in time  
23 prior?

24 A. Correct.

25 Q. Have you ever taught any courses on drugs and

1 alcohol?

2 A. No.

3 Q. And I am assuming having the opportunity to  
4 review that, you were aware that Mr. Rhoades actually had  
5 methamphetamines in his system as well as hydrocodone,  
6 Xanax and Ephedrine?

7 A. Yes.

8 Q. Now, you do have understanding, do you not, that  
9 Deputy Forsyth received training at the West Virginia  
10 State Police Academy?

11 A. Yes.

12 Q. And we just talked about, as of this point in  
13 time you have not reviewed any training materials provided  
14 by the academy?

15 A. Not yet.

16 Q. And you have asked counsel that retained you to  
17 see about getting those materials; correct?

18 A. Correct.

19 Q. And at this point in time your opinion is you  
20 believe that the training Deputy Forsyth received was not  
21 sufficient with regard to traffic stops; correct?

22 A. Correct.

23 Q. Yet at this point in time you have no idea what  
24 training he might have received, any stint of that  
25 training provided by the academy; correct?

1           A.     Bearing in mind that he went to the academy, I  
2     think it was four years before. There was many years  
3     between the academy and when the event took place. And  
4     the agency would have hopefully provided them with  
5     additional training and ongoing training. But there was  
6     no documented training in that regard from the agency. So  
7     the extent of his training for an academy, until I can get  
8     those records, I don't know what he got so many years  
9     before the event took place.

10          Q.     During that four year window was there any  
11     significant change in any opinion issued by the U.S.  
12     Supreme Court that would change the way a police officer  
13     should respond to a traffic stop or a felony traffic stop?

14          A.     I think you have to be very careful about it.  
15     It's not just Supreme Court rulings that change the way  
16     you respond. It's about creating a condition of the  
17     response in the officer to be able to deal with an event.  
18     And if you are not providing adequate training and  
19     preparing them for the stress that is associated with  
20     various events you are not providing training. So just  
21     because I go and I get the mechanics of how to conduct a  
22     high risk traffic stop does not mean, one, that I am going  
23     to recall it for the rest of my career. Two, that the  
24     materials in which the academy is training is going to be  
25     conducive to every environment in every situation. And

1 the agency actually has responsibility for providing  
2 training that continues to help the personnel perform  
3 their duties. So there is no Supreme Court ruling about  
4 traffic stops that is going to alter the training  
5 requirement in the way that you preform a traffic stop.

6 Q. And that was my question. Was there anything  
7 that came down from the Court that said, you guys used to  
8 be able to do this and now we don't want you to do that  
9 anymore. Anything like that, that would have occurred  
10 during that window when Deputy Forsyth attended the  
11 academy versus when this incident occurred?

12 A. Telling him not to do something?

13 Q. The way that they should approach a traffic stop  
14 or a felony traffic stop. Anything that you are aware of  
15 that you learned that came down from a higher court that  
16 would change the way that a police officer should be  
17 trained to handle those traffic stops?

18 A. I don't know of any federal court decision or  
19 mandate on how they should handle that, has changed in  
20 that period, no.

21 Q. At the time you authored your May 15th, 2019  
22 report, that report contained all the facts and data that  
23 you had considered in forming your opinions other than  
24 this discussion we had about maybe some reference material  
25 that you didn't cite?

1 A. Correct.

2 Q. Did you conduct any kind of testing or research  
3 in connection with the formulation of the opinions other  
4 than the reference materials that we talked about?

5 A. Testing, no.

6 Q. Did you ever do any kind of independent research  
7 on the Marion County Sheriff's Department?

8 A. No. I was provided with articles at some point  
9 from a newspaper. But that wasn't research I conducted.  
10 It will be on that.

11 Q. There wasn't anything that you cite from any  
12 newspaper article that you've at least referenced in your  
13 report; correct?

14 A. No.

15 Q. Did you ever go to the scene of the shooting?

16 A. Not yet.

17 Q. You say not yet. Are you planning to?

18 A. Oh, I definitely would like to.

19 Q. Is there a reason you did not do that before you  
20 authored your report in this case setting forth your  
21 opinions?

22 A. The photographs taken by the investigator, the  
23 sergeant with the West Virginia State Police and his  
24 drawing plus the drawing that was created by a  
25 professional investigator that the followup. Was it

1 Sterile?

2 Q. Straley.

3 A. Straley. Gosh, I don't know how I brutalize  
4 that every time.

5 They gave me enough information to review and assess  
6 and evaluate the fact that this is a very confined small  
7 area. There is enough information to look at the vehicle  
8 sizes and offer that, that don't require a scenic  
9 examination. It is always preferable. I always do one.  
10 Especially before trial, but it is not a requirement.  
11 Unless it's an unusual scene.

12 This one, the pictures from various angles and the  
13 information provided I felt was adequate enough for me to  
14 evaluate and assess so that I could create my report.

15 Q. If the information that was provided through the  
16 drawings and the photographs was adequate enough for you  
17 to be able to create your report, then what is the reason  
18 for you to go to the site after you have already provided  
19 the opinions to me in this case?

20 A. Because I always like to go to the site.

21 Q. Did you ask counsel if you could go to the site  
22 before you authored your report?

23 A. No.

24 Q. You mentioned that you had reviewed some news  
25 articles and you believe those may have been provided by



1 counsel. But you didn't do any research of your own and  
2 read any online news articles or anything like that;  
3 correct?

4 A. Correct.

5 Q. Since you didn't go to the scene is it safe to  
6 say you have not created any diagram of your own with  
7 regard to that actual scene?

8 A. That's correct.

9 Q. You told me that you did not receive and review  
10 the depositions of the family members. Have you ever  
11 interviewed or spoken with any member of the Rhoades  
12 family?

13 A. No.

14 Q. Have you spoken with or any witness in this  
15 case?

16 A. No.

17 Q. Have you ever personally spoken with or  
18 interviewed any witness involving this case?

19 A. No.

20 Q. Never spoken with Carl Straley; Correct? The  
21 professional investigator.

22 A. That's correct. I asked to.

23 Q. So you asked to speak to Mr. Straley, why?

24 A. Well, at the time I hadn't gotten his  
25 information yet and I thought the quickest most direct

1 route to get information would be to request to speak to  
2 him. But then I got his information, so.

3 Q. After getting the information did you pursue  
4 your request to speak with him?

5 A. No. Because he had no firsthand information.  
6 And he is the one that located the casings. And also, he  
7 took one photograph that he made an attempt to show  
8 directionality of a bullet. Other than that, what he had  
9 to offer was after the event. And my concern was what  
10 took place at the time of the event.

11 Q. The only folks that were there at the time of  
12 the event were Rhoades, Love and Forsyth?

13 A. That is correct.

14 Q. Did you prepare any draft report in this case?

15 A. No.

16 Q. Did you speak with counsel before you finalized  
17 your report?

18 A. No. Well, I am sure we had conversations. But  
19 we didn't speak about the report before I finalized it.

20 Q. And that was the question.

21 Do you know how many hours you have in this case prior  
22 to the start of your deposition today?

23 A. Forty-eight.

24 Q. Do you know how much -- I know you received,  
25 based on the documents provided, you received a five

1 thousand dollar retainer; correct?

2 A. Yes.

3 Q. Have you invoiced additional amounts to counsel  
4 and received additional payments?

5 A. Yes.

6 Q. How much payment have you received thus far?

7 A. As of right now, including the deposition fee,  
8 13,000.

9 Q. You understand that I pay the deposition fee;  
10 correct?

11 A. Yes. But I am just trying to be all inclusive.  
12 The deposition fee was a \$1,000 for the first four hours.  
13 And then it will be billed out in addition to that. So it  
14 is \$12,000 at this point, from counsel.

15 Q. With regard to the preparation of the report,  
16 that's Exhibit 2, do you kind of have a specific process  
17 that you follow in every case where you are preparing an  
18 expert report?

19 A. An internal guide?

20 Q. Well, not something necessarily in writing but  
21 just a process. Well, in every case here is what I am  
22 going to do and here is how I prepare my report. Do you  
23 have a process like that?

24 A. Of course.

25 Q. Tell me what that process is.

1           A.     Well, it starts with gaining the information,  
2     the initial information, from whoever has retained me so  
3     that I can do a thorough review of the documentation to  
4     see what's there, what's not there, what I need. Once I  
5     have done my initial review of the materials provided I  
6     start asking for additional information so that I -- every  
7     event is different. Ever -- the manner in which people  
8     conduct investigations is different. So I go out of my  
9     way to always try to give benefit for law enforcement  
10    first because of the type of events that take place in  
11    their profession.

12           So when I get the materials I request other documents,  
13    things that either substantiate their behaviors or may fly  
14    against them. Things that will help prove that the agency  
15    taught them how to do it but they ignored what they were  
16    taught, or told them how to do it -- I try to, whatever  
17    the case might be, I try to gather that information so  
18    that I can review it in it's entirety. Then my process,  
19    also, if there is a deposition, if it is audio recorded  
20    and or video recorded, I want the transcript. I want the  
21    audio. And I want the video. I want to look at them all.  
22    Because for example, in this case there are times where  
23    the transcription is wrote inaudible. You can clearly  
24    hear what is being said but it was written inaudible. Or  
25    things -- in one part of the -- the transcript, Mr., I'm

1    sorry, Detective Forsyth said I was in fear. The  
2    transcriptionist wrote, I was in threat. That is what  
3    appears in Mr. Faulkner's, I was in threat. He didn't say  
4    threat. So I try to get all of these things together  
5    because I listen to and read all of them as I go along.  
6    And like I said, with a transcript if I see something,  
7    plus I also look at behavioral cues and things like that  
8    when we are doing the interview. Transcripts provide  
9    content. That is it. And I like to hear the way they  
10   speak and stuff so that I can take into context what's  
11   being said. Not just what's written on a piece of paper.  
12   My favorite example of that is My Cousin Vinny. You know,  
13   there is a scene where he says, I shot the clerk. And the  
14   guy presents it in court as he, you know, admitted that he  
15   shot the clerk. That's just -- you know, when I teach my  
16   class I tell people, read all three of them. So those are  
17   my processes. Then when I get all of the material  
18   together and I've gone through them, I then go back  
19   through. And for example, when you get depositions. Now  
20   I go back and I look at the original statements and the  
21   depositions, see how they have changed. There are going  
22   to be changes usually, because most people are interviewed  
23   immediately following an event. There's transitions.  
24   There's memory issues. There's memory issues. There's a  
25   lot of things that need to be taken into consideration.

1 Then when you get the deposition, well, where did that  
2 come from. So I go back and I, again, well, why would  
3 this happen. And I take into, my background training  
4 experience. If something is not an issue to me, other  
5 people may want to make a big point out of it, you know,  
6 and I will give you an example. In this particular  
7 matter, going to the hospital. I don't care. I don't  
8 need to opine on that because it is a good practice. It's  
9 not part, it's not what I've been asked to review. So  
10 where other people may focus on certain things, I don't.  
11 That doesn't come into what's happening during the force  
12 event. So I try to separate those variables. And then  
13 once I get done through this whole process I then start  
14 formulating my opinions. I look at the actions. I look  
15 at policies and procedures. Training potential issues.  
16 Or positives. Then I create my final report and submit  
17 it.

18 Q. I guess what I am trying to figure out is, you  
19 told me that you don't take notes but you highlight  
20 things. And you say when you are taking out of, like,  
21 documents you put them into your report. But as you've  
22 described that process for me, you do all those things  
23 before you formulate your opinion. So what I'm trying to  
24 figure out is, for instance, you're reviewing the state  
25 police report and the statements. The statements that

1 Deputy Love and Forsyth provided on August the 4th. As  
2 you are initially reviewing those, are you taking things  
3 out and plugging them into what ends up being your report  
4 or do you review them and then go back later and review  
5 them again and take things out and put into a report.  
6 Does that make sense?

7 A. Yes. My process is -- I've been blessed with a  
8 very good memory. When I go through things I highlight.  
9 I've always had the ability when I hear something, for  
10 example, when somebody makes a statement in an interview  
11 and then I listen to a subsequent interview and it's  
12 different, I can't explain why I have the ability. Wait a  
13 minute, and I will go back to the interview that is not  
14 what they said. It's just a strength that I have. I -- I  
15 don't have a photographic memory. I wish I had that where  
16 I could just look at something and know. But for some  
17 reason I have an ability to recall and pull things out.  
18 And my process has always been that, you know, for  
19 example, if I -- if I write something down that's a  
20 deviation --

21 Q. Uh-huh.

22 A. -- it will be into the opinion. If I am  
23 creating my report it will be into the opinion. When I  
24 get the next -- if that's not applicable I just delete it.  
25 Cause if I am wrong, if I find out, wait a minute that

1 didn't, no that's not right, I delete it. And that is --  
2 my report is literally that culmination of all that  
3 information.

4 Q. It's an ongoing process. So as you just  
5 described. If you put something in your report that you  
6 initially think might be pertinent and then as you review  
7 other documents you think it's not, you go back and delete  
8 that out. But there's no version of the report that  
9 exists that has that initial information you put into the  
10 report; is that correct?

11 A. That -- that's correct. Because I wouldn't want  
12 to mislead somebody with inaccurate information.

13 Q. Were you provided any kind of summaries of  
14 documents that were provided to you by counsel?

15 A. Summary?

16 Q. Yeah. Like attorneys sometimes will summarize a  
17 deposition transcript and send a summary.

18 A. Oh, no. No.

19 Q. No summaries of any documents whatsoever?

20 A. No. They've given me the full enchilada.

21 Q. On page 8 of your report in the Statement of  
22 Purpose section. It says you were asked by the plaintiffs  
23 in this case to apply your background training and  
24 experience as to what was seen on video footage. Do you  
25 see that?



1 A. Yes.

2 Q. You would agree with me with regard to  
3 Mr. Rhoades the only video footage is the July 25th, 2017  
4 dashcam where Mr. Rhoades led police on a chase throughout  
5 Marion County; right?

6 A. Yes.

7 Q. You watched that video; right?

8 A. Yes.

9 Q. You would agree with me that, that was a  
10 dangerous chase?

11 A. No question.

12 Q. And that Mr. Rhoades was placing citizens of  
13 Marion County at risk by driving as fast as he was through  
14 those residential areas?

15 A. Yes.

16 Q. And in fact, at that point Marion County  
17 Sheriff's Department called off the pursuit because of how  
18 dangerous the nature was?

19 A. Excellent choice.

20 Q. Is there any reason that your report doesn't  
21 discuss this prior incident in detail as to the dangerous  
22 nature of the conduct that Mr. Rhoades was engaging in,  
23 exposing citizens of Marion County to harm?

24 A. Well, I was asked to evaluate the application of  
25 force and the decision making process. And one has to

1 remember that in a pursuit the catalyst of negative  
2 driving behaviors is the law enforcement pursuing them.  
3 Thereby remove the police, no more pursuit. For example,  
4 I didn't see any documentation or reference by anybody,  
5 the investigator or anything else that there is an  
6 extensive bad reckless complaints and history of Mr.  
7 Rhoades outside of the pursuit. So, when I look at a  
8 force event his running from police, welcome to law  
9 enforcement. They -- they run. You pursue them or if it  
10 becomes too dangerous you cancel the pursuit, whatever the  
11 case might be. Good decision. Look, we know where he is.  
12 We know who he is. We will get him later. So in looking  
13 at that and trying to say well, because -- well, I'm sure  
14 we will get to it. The assertion that he is an ongoing  
15 risk to public safety because of this one pursuit, that  
16 implies that is his driving practice all the time 24/7.  
17 Where as that's not been substantiated by anything else.  
18 It is a variable officers should take into consideration  
19 when trying to apprehend someone. But it is not something  
20 that I need to include in a report that, on this day he  
21 was driving like a jerk. It doesn't take anybody outside  
22 of the normal realm to look at a video and say, wow that  
23 is really horrible driving.

24 Q. What eventually led to the use of force at the  
25 gas site, at the gas well site started off as a pursuit;

1 correct?

2 A. Well, it was a pursuit initiated by another  
3 officer. And they lost sight. They were no longer in  
4 pursuit. The fact that you are searching for them means  
5 the pursuit is ended. Pursuing means they are running,  
6 you're chasing. They constant assertion well, I was  
7 continuing -- and everything is written in the pursuit --  
8 you weren't. You were looking for him. So just like with  
9 every event there are start and stop points. He was being  
10 pursued by another deputy. He was even being -- attempted  
11 to be in pursuit by Deputy Forsyth who almost immediately  
12 lost sight of him with the exception of dust trails. And  
13 then they were just trying to find the dust trails. So  
14 the pursuit ended when you no longer have the pursuee.

15 Q. Would you agree with me that none of us, me,  
16 you, the counsel in this case know exactly how the  
17 incident with Mr. Rhoades began and ended up where it was?

18 A. None of us were there.

19 Q. The perception that's important is, what took  
20 place in Deputy Forsyth's mind at the time he discharged  
21 the weapon?

22 A. That is very important.

23 Q. And as long as he perceived that he was in  
24 imminent peril of great bodily harm or death, he would be  
25 justified in discharging his firearm?

1           A.     If that's his honest perception. And what I  
2     would like to add to that is, fear justifies force. Facts  
3     make fear reasonable. There is an element that, yes, I  
4     can say I was in fear for my life. And I should be able  
5     to substantiate that with information. So the  
6     articulation of fear, fear is what justifies the  
7     application of force. If you were not in fear, you cannot  
8     use force.

9           Q.     I think the supreme court, wasn't it in Graham  
10    v. Connor. Graham v. Connor said that you don't look at  
11    it in 20/20 hindsight, you look at it based on what was  
12    perceived by the police officer.

13          A.     Okay. But it also says in that decision that he  
14    has the obligation of providing information to support  
15    that fear.

16          Q.     Okay.

17          A.     So, yes. I am not looking at it with 20/20  
18    hindsight.

19          Q.     Okay.

20          A.     I am looking at it from the perspective of the  
21    officer at the moment he discharged the firearm given all  
22    of the information provided to me through the investigated  
23    efforts of Sergeant, he was Sergeant at the time. At  
24    least he is Sergeant now. Sergeant Branham. Did I say  
25    his name right?

1 Q. Uh-huh. Yes.

2 A. So the totality of the event is really  
3 important. And that influences the perspective of the  
4 officer.

5 Q. And so I think, just following up on what you  
6 said, is you agree that you take into consideration  
7 everything that you learn about an incident?

8 A. At the -- yes. To a point. I -- I am not sure,  
9 when you say everything to an incident. For example, the  
10 pursuit that happened before, that is not the influencing  
11 variable on him making the decision to pull the trigger.  
12 The decision to pull the trigger was based on what was  
13 happening right there. Not what happened on the 25th.  
14 That can be an element that's used later to help  
15 substantiate an ongoing fear of whatever. But it's not  
16 what caused him to pull the trigger at that moment.

17 Q. The fact that at least it was asserted by the  
18 Marion County Sheriff's Deputies, or Sheriff's Department  
19 that in the prior incident that Mr. Rhoades tried to run  
20 over Deputy Love. You recall that; right?

21 A. Do I recall that being said?

22 Q. Yes.

23 A. I recall it being said but there is some very  
24 big questions on that as well.

25 Q. Well, there was an arrest warrant issued;

1 correct?

2 A. One in which that the victim of the crime didn't  
3 have any information on or know about, yes.

4 Q. With regard to what occurred then, if there was  
5 a prior incident that was alleged that Mr. Rhoades had  
6 tried to run over another deputy a week prior, is it your  
7 testimony in this case that information would not be  
8 relevant as to what was in the state of mind of Deputy  
9 Forsyth as he made the decision to pull the trigger?

10 A. Well, no, because, again, now we are going back  
11 to which statements we are going to be looking at. If  
12 there was, for example, they said that there was multiple  
13 felony warrants. One for attempted murder on a police  
14 officer. According to statements he didn't know that one,  
15 he wasn't sure this was Rhoades and two, he didn't know  
16 that it was Deputy Love that had been involved in this  
17 event.

18 If you are going to take information, yes, you have to  
19 take it at face value. If I tell you, for example, if  
20 suddenly somebody says -- what was the other statement  
21 that they made. Oh, he's not going back to jail. Or  
22 something to that effect. Who said it. The fact that  
23 it's said could be an influencing variable. But now we  
24 have the obligation to verify what was said, how it was  
25 said, what was done. When we look back at the initial

1 event on the 25th, I believe it was, there's not even a  
2 document -- documentation of the shooting that took place  
3 on that day. The only document that I could find was  
4 relative to Deputy Love having to jump out of the way of a  
5 vehicle that was spinning tires, kicking up mud and grass  
6 and all these other variables. Yet he was able to get out  
7 of the way of the vehicle, draw up and then hit a moving  
8 tire as it passes him. So there is a lot of things that  
9 come into this. At face value the average person who  
10 hears, he has an attempted murder warrant on a police  
11 officer, of course that would be a variable that goes  
12 involved in it.

13 Q. Well, you said one of the things, and you said a  
14 lot there, but one of the things I believe you said was  
15 that it might be at least worth considering if Deputy  
16 Forsyth knew that Deputy Love was the one that was  
17 involved in the attempted murder on a police officer.

18 A. Let me correct myself. He knew, according to  
19 him, there was -- well, based on statements. Because the  
20 statements have changed. But based on statements, the  
21 original statement was that he knew that he had active  
22 warrants and one was a -- or felony warrants and one was a  
23 warrant for attempted murder of a police officer.

24 Q. Uh-huh.

25 A. Forgetting Deputy Love for the moment. At face

1 value he knew Mr. Rhoades to be a violent felon. He knew  
2 that. If we are going on this path where his statements  
3 are he knew this information, he knew he was trying to  
4 pursue a violent felon. He knew that the person he was  
5 confronting in the gas well site was a violent felon.  
6 Attempted murder on a police officer. It didn't seem to  
7 influence his behavior as far as tactical decisions and  
8 other things. So I guess it comes down to, at face value  
9 what we know is very important. But we still have to be  
10 able to articulate how that's influencing our behaviors  
11 and decision making process. In and of itself, saying  
12 somebody did or said something. We need more than that.

13 Q. Would you agree with me that the moment an  
14 individual feels that they are in a situation that places  
15 them in danger of great bodily harm or death that it is  
16 objectively reasonable for them to use force that will  
17 also result in great bodily harm or death?

18 A. Absolutely.

19 Q. Would you agree with the statement that we all  
20 know that fear justifies force?

21 A. Yes.

22 Q. Would you agree with me that what you consider a  
23 reasonable fear and what I consider to be a reasonable  
24 fear is different because everyone is different based on  
25 background training, experiences and information available



1 regarding a particular threat?

2 A. One hundred percent.

3 Q. Would you agree with me that a situation such as  
4 an individual facing threat from a weapon is a very fluid  
5 event?

6 A. Yes.

7 Q. And that you have to consider all the  
8 information to see if it is reasonable for the person  
9 facing the threat to come to the conclusion that they need  
10 to use force and maybe deadly force?

11 A. Yes.

12 Q. Would you agree with me that when dealing with a  
13 suspect armed with a deadly weapon, fractions of a second  
14 can make the difference between going home at the end of a  
15 police officer's shift and having a law enforcement  
16 officer's funeral?

17 A. A hundred percent.

18 Q. You would agree with me also in terms of a  
19 deadly weapon, that a vehicle can be a deadly weapon?

20 A. Yes.

21 Q. In fact, it is not unusual for officers to be  
22 struck by vehicles of people who are trying to get away?

23 A. It has happened a lot. Sure.

24 Q. Would you agree with me that there are a number  
25 of factors that you would consider with respect to what is

1 or is not considered a threat when evaluating the use of  
2 deadly force?

3 A. Yes.

4 Q. For instance the relative positions of the  
5 police officer in the threat?

6 A. Yes.

7 Q. The distance from the police officer to that  
8 threat?

9 A. Yes.

10 Q. Would you agree that the closer the officer is  
11 to the threat the greater the threat is?

12 A. Oh, sure.

13 Q. You would also look at whether the threat is  
14 actually armed?

15 A. Yes. But it can be a threat without a weapon.

16 Q. But armed could include armed with a vehicle?

17 A. Sure.

18 Q. Do you recall there was a case in Florida I  
19 think maybe that you were involved in where two law  
20 enforcement officers actually shot two individuals and the  
21 suspects were not armed but the suspects were in a vehicle  
22 and were using that vehicle as a weapon?

23 A. Oh, yes.

24 Q. You actually found in that case there was no  
25 violation of any policy or procedure involved in that

1 shooting; correct?

2 A. If it is the one I am thinking of with, I think  
3 it was Skowronski and Munsey.

4 Q. Munsey.

5 A. Yes, ma'am.

6 Q. When you made that finding that there was no  
7 violation of any policy or procedure involved in that  
8 shooting, were you doing that -- were you involved still  
9 with the Martin County Sheriff's Department?

10 A. At that time, yes.

11 Q. So at that time when you were still a law  
12 enforcement officer of your own you found that the actions  
13 of those suspects, they didn't have an actual gun or a  
14 knife or anything, they were armed with a vehicle, but you  
15 found that their actions were objectively reasonable?

16 A. Based on the information provided throughout a  
17 comprehensive investigation. I wasn't there at the time.  
18 I had to do the same kind of review and assessment that I  
19 would do here.

20 Q. Would you also agree that one of the factors  
21 that you consider in determining whether to evaluate a  
22 threat or non, and to use deadly force is the demeanor of  
23 the suspect?

24 A. Of course.

25 Q. And prior aspects of the suspect?

1 A. Could be inclusive, yes.

2 Q. As a law enforcement officer you were taught to  
3 take all of those things into consideration in to  
4 determining whether to actually fire your weapon or not;  
5 right?

6 A. Yes.

7 Q. That is part of what you would consider the  
8 totality of the circumstances; right?

9 A. Yes.

10 Q. Would you agree with me that you would point  
11 your weapon at an individual who is harmed {sic} as the  
12 threat becomes more imminent? That if the threat becomes  
13 more imminent to you as a law enforcement officer that you  
14 are going to point your weapon at that individual?

15 A. You are saying -- imminent is basically defined  
16 as, without a fixed moment in time it's a possibility.  
17 Where as immediate is happening at a guaranteed moment in  
18 time without -- so I'm --

19 Q. Let's talk about this. Are there factors that  
20 would cause a threat to become more imminent to a law  
21 enforcement officer? I mean, you see a threat. Certain  
22 things occur that cause that threat then to become more  
23 imminent to that particular law enforcement officer; is  
24 that true?

25 A. Yes. If I am following what you are saying

1 correctly. Yes.

2 Q. Factors that would cause the threat to become  
3 more imminent would be the distance or proximity to the  
4 threat?

5 A. Sure. Spacial relations.

6 Q. Another factor that would cause the threat to  
7 become more imminent to the police officer would be the  
8 lack of communication with the suspect?

9 A. What do you mean by that, the lack of  
10 communication? A threat does not -- you're saying that  
11 because I can't talk to you, the threat is more --

12 Q. Yes.

13 A. -- increasing? I think it would be more along  
14 the lines of your disposition. Do so much that I can't  
15 talk to you as what your behaviors are in response to my  
16 talking to you.

17 Q. Would you agree that another factor that would  
18 cause a threat to become more imminent to a law  
19 enforcement officer would be if a suspect is failing to  
20 follow that law enforcements orders?

21 A. Oh, it definitely should increase your awareness  
22 if nothing else.

23 Q. Another factor you would consider a threat to  
24 become more imminent would be if you have a fear for your  
25 own safety?

1           A.     Based on?

2           Q.     Based on what is being presented to you by that  
3     threat. That the threat is not responding to your orders.  
4     The threat is becoming closer. Those kinds of things.

5           A.     I'm sorry, can you restate your question?

6           Q.     Sure. That -- the initial question was, another  
7     factor that you would consider whether a threat is  
8     becoming more imminent to a law enforcement officer, is it  
9     that law enforcement officer has a fear for his or her  
10    safety; right?

11          A.     I think that -- guess I just don't agree with  
12    the manner in which you are phrasing that.

13          The feeling that you get -- the fear for your safety is  
14    the culmination of everything else you talked about. The  
15    fact that you are afraid doesn't mean that the threat is  
16    getting stronger. Your fear is based on the threat. So  
17    whether it's an immediate threat which is taking place  
18    right then and there, which would be what we would look at  
19    in this particular matter versus the imminent threat or  
20    the potential threat, which is what they were talking  
21    about as a possibility with his pursuit driving. Imminent  
22    verses immediate. Mr. -- or I'm sorry. Detective  
23    Forsyth, in this particular matter was dealing with the  
24    immediate threat being presented to him not an imminent  
25    threat. So I guess that's where we are having a

1 disconnect. But your fear is developed out of the other  
2 things that you've talked about.

3 Q. Would you agree with me as these other things  
4 develop and if you have this fear, based on these other  
5 things as they are progressing that it's just a matter of  
6 what you as the individual view as option presented to you  
7 as that threat is presented?

8 MR. EDWARDS: Object to the form. I didn't  
9 follow that.

10 MRS. DURST: Sure.

11 BY MRS. DURST:

12 Q. We've discussed all these factors that you take  
13 into consideration as to whether the person is developing  
14 this fear of the threat; right?

15 A. Yes.

16 Q. And that if I'm the person that is experiencing  
17 this fear, based on all of these things that we have  
18 discussed, that it's a matter of what I as the person that  
19 is facing that fear view as my option for the action to  
20 take. Not what you from the outside are seeing, what I'm  
21 seeing as the person that is facing the fear. Does that  
22 make sense?

23 A. I think it does. You have to make the decision.

24 Q. So I have to decide on what options I have  
25 available to me?

1           A.     Yes.   And I, you know, in a particular matter  
2   such as this, it's based on background training and  
3   experience.   But you are the one experiencing the fear.  
4   You're the one that has to decide what the best response  
5   would be to whatever threat is being presented.

6           Q.     Would you agree that after recognizing a deadly  
7   threat you have to take some type of appropriate action to  
8   neutralize that deadly threat?

9           A.     Yes.   If it's a deadly threat to you or someone  
10   else you have to do something or the threat is going to  
11   fulfill itself potentially.

12          Q.     And in neutralizing the thereat could include  
13   firing a round?

14          A.     Oh, yes.

15          Q.     Is an important component of recognizing the  
16   threat and taking the action the reaction time between  
17   when you see the threat and when your mind tells your body  
18   what you should do?

19          A.     Well, that's -- absolutely.   But reaction time  
20   is a component involved in the force decision making  
21   process.

22          Q.     So that's just one important component of it?

23          A.     It's a variable that influences the outcome.

24          Q.     During the time that you are recognizing the  
25   threat and your brain is telling your body what do to, you



1 could have a situation where the threat could be moving;  
2 right?

3 A. Oh, of course.

4 Q. The threat could actually be moving towards you?

5 A. Sure.

6 Q. Now, you've talked about the various training  
7 that you've provided, you know, with the academy. Have  
8 you provided training with respect to shooting at a  
9 target?

10 A. Yes.

11 Q. Would you agree with me there would be times  
12 when you would want your officer that you are training to  
13 turn around and fire a round at a target in as little as  
14 two seconds?

15 A. Not turn around. But be able -- if you want to  
16 be proficient with your holsters, for example, SAFARILAND  
17 has a two second requirement that you are not considered  
18 proficient with that holster system unless you can get the  
19 weapon out of the holster on target and one round on  
20 target in under two seconds.

21 Q. And so whether you have to turn around or not,  
22 you would, during those two seconds you would expect your  
23 officer to see the target, perceive the target and react  
24 to the target and make a decision whether or not to shoot,  
25 all in the matter of two seconds?

1 A. No. See, that's where you're confusing it.

2 Q. Okay.

3 A. When you initiate motor action, response and  
4 reaction time have just taken place. The last step in the  
5 reaction time principle is initiating motor action. Well,  
6 if the fact you are going for your holster means you have  
7 already seen, perceived and are responding to the threat.  
8 Within two seconds you have to have that weapon out of the  
9 holster and on target to engage it. Anything over that  
10 means you need more training, you can't get your gun out  
11 of the -- it might as well be super glued to your hip.  
12 But the variables involved in the observational process  
13 that the response time to a recognizing a threat, there  
14 are -- and again, we go back to training and stuff for the  
15 individual. Everybody is different. But there are -- you  
16 can look at simple traffic studies to determine actual  
17 response times. You can look at For Science and what they  
18 have done with them. But when you are looking at the  
19 amount of time it takes to see and comprehend a threat,  
20 then once that has been collected, now your brain has two  
21 choices immediately deploy a strategy that is already been  
22 put in place through training and experience or cultivate  
23 or develop a strategy. Which, that's a little too late  
24 because you are already in the middle of it.

25 Q. So as the question as I phrased it, which said,

1 during the two seconds you would expect them to see the  
2 target, perceive the target, react to the target and make  
3 a decision whether to shoot or not, you disagree with that  
4 statement; is that right?

5 A. Well, because you are -- that is a very large  
6 generalization. You need to be -- what caused you to draw  
7 the weapon out of the holster. So if you have a two  
8 second window to get the weapon out of the holster, if  
9 that drawing, and I want to make sure we are on the same  
10 playing field here, if you're removing the weapon from the  
11 holster that means you've already observed something.  
12 You've already gone through some of the processes that  
13 stimulated the muscle response. So it could take longer  
14 than -- the ultimate goal is have a condition response.  
15 For example, I've had deputies that I've trained and  
16 people that I've trained where they can turn a target,  
17 perceive it, whether it's a shoot don't shoot target, and  
18 be on target in under two seconds. Others have taken  
19 longer because they don't understand that there is a  
20 window that they need to perceive the target -- whether --  
21 it's not just, hey, look shoot a silhouette. It's make a  
22 decision as to whether or not that's a threat or not.  
23 Optimal responses, if you can get somebody to have a  
24 conditioned response that it initiates the action as soon  
25 as the threat is perceived, then we now can transition it.

1 I want it effectively dealt with within that two seconds.  
2 Did I -- I hope I didn't confuse you with that. I'm  
3 trying to --

4 Q. You didn't. And my question was much -- and you  
5 can provide any explanation you want. My question was,  
6 you disagree with the statement that I read to you that,  
7 during the two seconds you would expect them to see the  
8 target, perceive the target, react to the target and make  
9 a decision whether or not to shoot. You disagree with  
10 that statement?

11 A. No. I am not saying I disagree. Who, are we  
12 talking about law enforcement?

13 Q. Yes.

14 A. Then I would expect a law enforcement officer to  
15 be able to begin to do those processes in that given  
16 period of time.

17 Q. And do that within the two seconds?

18 A. Within the two seconds. But I've also learned  
19 through experience that getting a weapon out of a holster  
20 in two seconds is enough of an issue for many in law  
21 enforcement because of lack of training. So there ability  
22 to see and perceive a threat -- which is why we go through  
23 condition response training. Stress inoculation. Things  
24 like that is, we are trying to expedite their ability to  
25 make a use of force decision based off good information

1 that they have available to them at the time, formulate a  
2 strategy that is automatically, so now they have created  
3 neuro pathways in their mind that says X equals -- easy  
4 example, if I go into any group of cops and I pull out a  
5 knife, they are pulling guns. That's a conditioned  
6 response. Nobody had to say, hey, it's a good idea if you  
7 pull a gun on this one. So when we look at the  
8 conditioning if we could achieve a two seconds where they  
9 can get the -- sometimes it's three quarters of a second.  
10 No, it's at least a third of a second for them to be able  
11 to perceive and recognize and there's the processing.  
12 Creating the forms that say A equals B to expedite the  
13 time between the two points. So I would love it to be two  
14 seconds. I would love it to be 1.5 seconds.

15 Q. In the training that you provided that's what  
16 you tried to train your --

17 A. That's the goal of it. Yes, ma'am.

18 Q. And you would train any officer you were  
19 providing training for, that hesitation will get them  
20 killed?

21 A. Without question.

22 Q. Would you agree with me that if an individual is  
23 armed with a weapon, you've given him or her commands, he  
24 ignores your commands and then that individual keeps  
25 moving in your direction with a weapon, you are going to

1 put a bullet in him; aren't you?

2 A. Yes.

3 Q. Fair to say you are not going to wait to see  
4 whether or not that individual actually intends on  
5 shooting you or anything like that; correct?

6 A. That's correct.

7 Q. And so if under that scenario that I gave you,  
8 if the individual is armed with a weapon such as a vehicle  
9 you've given the suspect commands, he is not following  
10 those commands, he ignores them and begins moving in your  
11 direction with the weapon, in that case a vehicle, you  
12 would put a bullet in him; right?

13 A. I wouldn't be in front of the vehicle. Cause  
14 you are ignoring another variable and you are adding into  
15 hypothetical and I recognize the materials that you are  
16 pulling them from.

17 You're taking into account the, well, the vehicle is a  
18 weapon. You're in front of the vehicle. Here is a really  
19 important thing about shooting at a motor vehicle, killing  
20 the driver doesn't stop the car. It doesn't.

21 Q. In this case it did; didn't it?

22 A. I don't believe it did. I don't believe it did.  
23 Based on my understanding of vehicle dynamics, based on my  
24 understanding of how these things transpired and based on  
25 the investigation that was provided, I don't see how it

1 was possible for this vehicle to be running in neutral  
2 after the driver was shot. If the catalyst for the  
3 vehicle stopping was the termination of a life behind the  
4 wheel, what was the catalyst to stop the vehicle in a  
5 standard transmission?

6 Q. You have no idea whether Mr. Rhoades was in the  
7 process of shifting gears at the time he was shot; do you?

8 A. So let me -- in a hypothetical that's been  
9 presented you have 30 feet, if the vehicle is 13 to 15  
10 feet long you have two to maybe three car lengths and he  
11 is going to accelerate so fast that he is in between first  
12 and second gear and yet the vehicle stops before it ever  
13 exits the gas well site. And is in the position in which  
14 one of the deputies identify it being in when they  
15 arrived. So unless it's a magical vehicle, just because  
16 one hypothesizes that this took place in between this,  
17 they are not accounting for vehicle dynamics, they are not  
18 accounting for what is the drag coefficient on the ground.  
19 How much force does it take to get the vehicle moving  
20 through the ground. How could it be going from first to  
21 second gear already. These variables and they said the  
22 engine was revving. And I know in the hypothetical that  
23 Mr. Faulkner put in there that it could have been his foot  
24 is on the clutch. He's already disengaged the clutch.  
25 He's on the accelerator. He's hearing the revving. And

1 the bullet hits him. And what caused him to take his foot  
2 off both the clutch and the gas and to stop the vehicle in  
3 less than ten feet. So all of these things, though they  
4 sound good when we talk about them individually, when we  
5 put them together in a sequence of events and actually  
6 investigate them and consider them in their totality they  
7 don't make sense.

8 Q. You mentioned a lot of terms. You've already  
9 told me that you are not a shooting scene  
10 reconstructionist; correct?

11 A. That is correct.

12 Q. And you are not an accident reconstructionist;  
13 are you?

14 A. Not an accident reconstructionist. I've been  
15 through traffic homicide investigations. I've seen  
16 traffic homicide investigations. I have worked countless  
17 wrecks. I have had to investigate wrecks involving  
18 pedestrians as well as commercial motor vehicles. Vehicle  
19 dynamics don't require reconstructionist to understand the  
20 basic operating function of a vehicle and the amount of  
21 time it takes to go from point A to point B. That is not  
22 required for a reconstructionist.

23 Q. You weren't identified as an expert with regard  
24 to vehicle dynamics, were you? You were identified as a  
25 use of force expert; correct?



1           A.     That is correct.

2           Q.     Would you agree with me that whether or not an  
3 individual is in fear for -- oh, let me back up. One of  
4 the things when I asked you the question you started off  
5 your answer, you said, I know what materials you are  
6 taking this from. What materials were you referring to  
7 when you started responding to my question?

8           A.     My impression, my feeling is that these were  
9 materials that could have possibly -- for example, I wrote  
10 programs and things for the Martin County Sheriff's Office  
11 and training and they just sound very familiar. They  
12 could either be from my training that you got from the  
13 Sheriff's office materials, which at the time they were  
14 written, depending on when they were written it could have  
15 been ten years ago, things do change and evolve and get  
16 better. Or there is certain materials that I recognize  
17 from some of the readings that I do with other periodicals  
18 or manuals such as, not just For Science, but Caliber  
19 Press and other groups that have put together materials.  
20 Which also helps us in creating the materials that we  
21 present to law enforcement. So that is what I meant by  
22 that. Because some of the material I felt like, well,  
23 that was true, but there has been evolutions. So it's not  
24 that, that wasn't accurate but there is more information  
25 now.

1 Q. So when you said you knew what materials that I  
2 was referring to you don't know specifics, you just think  
3 that it sounds familiar.

4 A. That's what I said. I feel I know the materials  
5 you are referring to.

6 Q. Would you agree with me that whether or not an  
7 individual is in fear for his life is a significant factor  
8 in determining whether or not they have a right to use  
9 deadly force?

10 A. Absolutely.

11 Q. You mentioned kind of early in the deposition  
12 when I asked you about how I think attorney Weston had  
13 contacted you and you mentioned that you had testified in  
14 the George Zimmerman case; correct?

15 A. Yes.

16 Q. In the Zimmerman case your opinion was that  
17 based on the fear that Mr. Zimmerman experienced that he  
18 had a right to defend himself; correct?

19 A. Yes.

20 Q. And because he was in fear for his life, whether  
21 or not Trayvon Martin actually was reaching for  
22 MR. Zimmerman's gun was a mute point?

23 A. That is correct.

24 Q. Mr. Zimmerman resorted to the defensive measure  
25 he thought most appropriate given the fact that he was in

1 fear for great bodily harm or death; correct?

2 A. Correct.

3 Q. Would you agree that in a situation involving an  
4 imminent threat you used the highest level of force you  
5 have available to you. So you don't really get behind the  
6 curve.

7 A. Say that one more time?

8 Q. Yeah. In a situation involving an imminent  
9 threat, you use the highest level of force you have  
10 available to you, so you are not put behind the eight  
11 ball?

12 A. I would state that you use the highest level of  
13 force reasonable for the threat that is being presented.  
14 Because a threat could be a punch and shooting them absent  
15 other variables and information that's not the appropriate  
16 connection. So you don't get behind the curve, yes, but I  
17 would put the caveat that you use the highest level of  
18 force reasonable to deal with the threat that is being  
19 presented.

20 Q. So the statement as I phrased it, you don't  
21 necessarily agree with because it did not include the use  
22 of the term reasonable?

23 A. Well, you said an imminent threat you use the  
24 highest level of force available to you.

25 Q. Yes.

1           A.    My answer to that would be adding the highest  
2   level available to you that is reasonable to deal with the  
3   threat that is being presented.

4           Q.    Okay.

5           A.    Because what is the threat.  You know, we have  
6   to -- what playing field are we talking on.

7           Q.    So going back to my question then.  You disagree  
8   with the statement because I didn't use the description of  
9   the use of reasonable force?

10          A.    In this particular setting, yes.

11          Q.    The use of the highest level force could include  
12   knowing whether or not -- I can't read my own writing,  
13   sorry.

14          That situation involving an imminent threat, if you  
15   make the decision to use the highest level of force, that  
16   could include not knowing whether or not the threat was  
17   actually armed; right?

18                   MR. EDWARDS:  Object to form.

19   BY MRS. DURST:

20          Q.    For instance, let's go back to the situation --  
21   I can't remember the name of the case.  LeMasters.  
22   Mr. LeMasters.  We talked about you testified, it was your  
23   opinion and he had the right to use the deadly force;  
24   right?

25          A.    Correct.

1 Q. Based on the threat that was presented to him he  
2 used the highest level of force available to him, which  
3 was shooting Mr. Martin, I believe was his name, Josh  
4 Martin. The suspect?

5 A. Yes.

6 Q. So based on what the information presented to  
7 him was he used that highest level of force.

8 A. Based on the threats being presented by  
9 Mr. Martin. He perceived it to be, yes.

10 Q. What was presented to him he did not know for  
11 sure whether Mr. Martin was armed or not?

12 A. No. He took him at his word at the doorway. He  
13 knew the second engagement he could clearly see him.

14 Q. So under that scenario in that situation  
15 involving that imminent threat Mr. LeMasters used the  
16 highest level of force regardless of whether or not it  
17 turned out that the person that was the threat was armed?

18 A. Taking in to the information that he available  
19 to him, that was the decision that he made, yes.

20 Q. So would you agree with me that pointing a gun  
21 at an occupant of a vehicle, even without any idea of  
22 whether that person is armed or not, you don't have any  
23 issue with that?

24 A. Well, I would like there to be some kind of  
25 basis for doing it. Just walking up and pointing a gun at

1 somebody, I have an issue with that. The way you phrased  
2 that was just pointing a gun at somebody is okay. Why are  
3 you pointing a gun at them.

4 Q. If the person in the vehicle was presenting a  
5 threat to you, whether you know that they are armed or  
6 not, if they are in this vehicle, whether you see a gun or  
7 not you don't have any problem with someone pointing a gun  
8 at the occupant of that vehicle; is that right?

9 A. Depending on the situation. Yes.

10 Q. Other than *Graham v. Connor* and *Tennessee v.*  
11 *Garner* are there any other legal decisions that you've  
12 relied upon to formulate any of your opinions?

13 A. No.

14 Q. Did you make a determination as to any  
15 constitutional standard you believed that governed Deputy  
16 Forsyth's conduct in this case? Like a constitutional  
17 standard. Like, your report doesn't reference any  
18 amendment to the constitution or anything like that. Did  
19 you make a determination as part of the formulation of  
20 your opinions in this case as to whether there was any  
21 violation of any constitutional --

22 A. Well, I guess because I used the *Graham v.*  
23 *Connor* when that decision was about the forth, eighth,  
24 fourteenth amendments, I think, of the constitution. So I  
25 guess including that was my, clearly, the ultimate --

1 taking somebody's life is the ultimate seizer.

2 Q. So without the further discussion, if that  
3 question is asked you would just refer to the  
4 constitutional standards that are cited in Graham?

5 A. Yes.

6 Q. Were there any other constitutional standards  
7 that you believed governed Deputy Forsyth's conduct that  
8 were specific to this incident?

9 A. Outside of the decisions the, standards that are  
10 articulated in both Tennessee v. Garner and Graham v.  
11 Connor cases, no.

12 Q. Opinion one. It's the lengthiest discussion.  
13 It starts on page 10 of your report. Do you see that?

14 A. Yes.

15 Q. And I'm paraphrasing, but it's essentially that  
16 Deputy Forsyth use of deadly force was not objectively  
17 reasonable; is that correct?

18 A. Correct.

19 Q. You start off, and I've got to find -- it starts  
20 near the bottom of that page. The paragraph that says,  
21 "below I have outlined," do you see that?

22 A. Yes.

23 Q. It's the third full paragraph. It says, "Below  
24 I have outlined the facts beyond change in this matter."  
25 I am trying to -- what do you mean by, beyond change?

1           A.     When I refer to facts beyond change, those are  
2     the facts that the state presented in the course of their  
3     investigation.

4           Q.     Okay.

5           A.     Those are directly attributed to the  
6     investigation. These were the facts that were presented  
7     and in support of whatever the case might be.

8           Q.     I'd just never heard that phrase.

9           A.     I can't alter it. Those are things that are not  
10    open to somebody else's interpretation. These are what  
11    was said.

12          Q.     With regard to opinion number one, based on the  
13    information that you have set forth as the basis for your  
14    opinions, is it your opinion essentially that the incident  
15    could not have occurred the way that it was described by  
16    Deputy Forsyth?

17          A.     Well, it did occur with him in front of the  
18    vehicle.

19          Q.     Well, you gave a long answer a few minutes ago  
20    when I asked about the vehicle stopping after it was shot.  
21    And you talked about the drag coefficient and all kinds of  
22    things. Is it your testimony that this incident as  
23    described by Deputy Forsyth did not or could not have  
24    occurred in that manner with the jeep moving toward him,  
25    is that your opinion?



1           A.     That is my opinion that -- yes. I am just going  
2 to leave it at that. Yeah it did not occur in that way.

3           Q.     So kind of part of, or basis for your opinion  
4 that the use of force was not objectively reasonable is  
5 that you don't believe that the situation that was  
6 presented to him occurred the way he described it?

7           A.     No. I came to that opinion based on the  
8 information provided through an investigation. Through  
9 variables involved in the investigation. Vehicle  
10 placement. Photographs that were taken. The statements  
11 that were made. And then actually, looking at the  
12 statement made and comparing it with the scene and the  
13 information available to you at the scene. So it wasn't  
14 just, I didn't think it had happened that way, it's based  
15 on the investigation that was presented to me it did not  
16 appear that the manner in which he described it could have  
17 taken place that way.

18          Q.     That was my question. Based on what you  
19 reviewed in this case, which sets forth the basis for your  
20 opinions, and you talk about the conflicting statements  
21 that you believe exist and the conflicts between  
22 statements and physical evidence, all of those basis you  
23 believe lead you to the conclusion that this incident  
24 could not have occurred the way Deputy Forsyth described  
25 it?

1           A.     Yes.

2           Q.     That seems to be somewhat of a common opinion  
3     for you. Do you recall in the Orr case that one of the  
4     opinions you have was that the event could not have  
5     unfolded as described by the parties in that cases?

6           A.     Yes. And it is very common that when people are  
7     providing this information or information that's  
8     inaccurate that things do not unfold. And it has been my  
9     experience in the cases that I have reviewed that to be  
10    the case. The opinion in this case is that the use of  
11    force was not objectively reasonable based on the totality  
12    of the investigation. Not just isolated down to what  
13    you're trying to make it. Oh, it's just because you don't  
14    think it couldn't have happened. The evidence and the  
15    statements conflict with each other. No one else wanted  
16    to pay attention to the conflicts, but as a neutral party  
17    with no skin in the game I look at it and say this should  
18    have been evaluated. These should have been checked out.  
19    These should have been researched, this information. But  
20    it wasn't. Oh, well, so now you are faced with the event  
21    as it's presented in the investigation. And they don't  
22    match up with the statements made.

23          Q.     Well, you just referred to yourself as a neutral  
24    party. You understand you are retained and you are being  
25    paid by the attorney representing the Estate of

1 Mr. Rhoades; correct?

2 A. I understand that I am being compensated for my  
3 time. My opinion is not for sale.

4 Q. But you wouldn't classify yourself as neutral  
5 when you are being paid by the party that you're  
6 testifying for, would you?

7 A. I would. Because if they were wrong or if I  
8 didn't feel that they had a case I would have told them  
9 that and we wouldn't be sitting here.

10 Q. In the Noble v. Vero Beach case you also  
11 testified that the event couldn't have unfolded as  
12 described by Officer Gasbarrini; correct?

13 A. That is absolutely correct.

14 Q. Were you ever made aware that the plaintiff in  
15 that case voluntarily dismissed the case against Vera  
16 (Phonetic) Beach?

17 A. Nope.

18 Q. Do you also recall in a case of Torres v.  
19 Sheriff Bonetti your opinion was that the timeline of  
20 events that was testified to by Deputy Bonetti did not  
21 make sense considering the events that he described?

22 A. That is correct. And based on the weapons  
23 systems and everything, I believe, that was the TASER  
24 case.

25 Q. You have repeatedly referred to and discussing

1 what we have discussed so far of your first opinion is  
2 that the part of the basis is you believe that there were  
3 explicit conflicts between the version of events offered  
4 by Deputy Forsyth and Deputy Love; right?

5 A. Yes.

6 Q. So is it true that you are relying on the  
7 timeline of events as described by Forsyth and Love in  
8 saying that there timelines don't match up?

9 A. No. I didn't mention the timelines in that.

10 Q. Well, you mentioned something about the vehicle  
11 being in the same place described by one of the officers  
12 as in when they pulled in, is that not considered part of  
13 the timeline as to how things occurred? About the vehicle  
14 in the same place as pulled in part of the time?

15 A. No. Well, it's position at the time, yes.  
16 There is a timeline throughout the entire event. However,  
17 when you mention that particular matter I am talking about  
18 the fact that without question Deputy Love puts the  
19 vehicle in the same place all the time. Before shooting  
20 and after. He puts it in the same position the entire  
21 time. That conflicts greatly with the information  
22 provided by Deputy Forsyth, which put the vehicle almost  
23 striking them, then backing up for a three point turn,  
24 then coming forward, then revving the engine, spinning the  
25 tires and accelerating to him in what he defined as an

1 aggressive manner. Those two variables in and of  
2 themselves, significantly different. Minusing the  
3 perspective observations and things like that, they are  
4 different. Never investigated. But it's an imperative  
5 part of getting the information to insure the right answer  
6 is arrived at.

7 Q. Which is another criticism you have with regard  
8 to the totality of the state police investigation?

9 A. Sure.

10 Q. Is it true that if you were investigating a  
11 shooting that you wouldn't really ever ask about the  
12 timeline because every event, especially in a high stress  
13 event, time seems to really exist in the way each person  
14 is considering it?

15 A. Well, you're conflating two different topics.  
16 Discussing a timeline versus asking something for time  
17 variables. When you look at somebody and say, well, how  
18 long did that take you. Time ceases to exist for somebody  
19 under stress. Which is why, even in all the stuff I read  
20 where people are trying to log people into times, I don't  
21 care because in that particular matter if you are talking  
22 about a matter of a quarter of a second or two seconds,  
23 trying to lock them into a time, you have to focus on the  
24 issue at hand. They may or may not be able to provide  
25 time. That is very different than establishing a timeline

1 and sequence of events based on the information provided.  
2 Those -- you have to take, for example, if you ask  
3 somebody how long it took to do something with a grain of  
4 salt. They may or may not be accurate. It's not the  
5 crutch to say, well, you're lying to me or anything like  
6 that. But it is a part of developing a timeline. But it  
7 is not the timeline.

8 Q. You reviewed the statements of Deputy Forsyth  
9 and Deputy Love in this case, the interview that was  
10 conducted by them of Sergeant Branham; correct?

11 A. Yes.

12 Q. When you review an interview, is it fair to say  
13 that you take into consideration everything from lay  
14 witness to the suspects to the defendant to whoever the  
15 case might involve, that there could be variations between  
16 what each person recalls?

17 A. Without question.

18 Q. And what each person saw?

19 A. Without question.

20 Q. Because everybody's perception is different;  
21 correct?

22 A. That is correct.

23 Q. You can have people testifying to different  
24 things who actually witnessed the same event?

25 A. Absolutely.

1 Q. Would you agree that a conflict in how an  
2 individual describes an event versus how another  
3 individual describes an event can depend upon the position  
4 of each person in relation to that particular incident?

5 A. Sure.

6 Q. It can also depend upon the memory of each  
7 individual; right?

8 A. Yes.

9 Q. Would you agree with me that feeling a high  
10 stress traumatic event like a shooting, that a person's  
11 body is going to undergo psychological and physiological  
12 responses that could impact their memory?

13 A. For a period of time or forever.

14 Q. In fact there are situations where it's not  
15 uncommon for an individual not to remember certain things  
16 occurring at all; correct?

17 A. Correct.

18 Q. I wanted to ask you, one of the things you  
19 mentioned about was going to the hospital. We will talk  
20 about that in a second. You've seen in the questioning of  
21 Deputy Forsyth and Former Deputy Love by Mr. Edwards that  
22 there were a number of questions asked of those  
23 individuals about Sergeant Branham asking them to give a  
24 statement on August the 2nd when the shooting occurred and  
25 they didn't actually provide statements until two days

1 later. Do you recall those questions?

2 A. Yes.

3 Q. Would you agree with me that was not the time  
4 for those individuals to actually be answering questions?

5 A. I do.

6 Q. The truth is that if you're asked by a police  
7 officer, even if you are a law enforcement officer who is  
8 involved in a shooting, if you are asked to give a  
9 statement immediately following the use of deadly force  
10 you should say no?

11 A. Absolutely.

12 Q. In fact, you would recommend that an individual  
13 not discuss the incident again until they were medically  
14 cleared?

15 A. Correct.

16 Q. And until they've had an opportunity to speak  
17 with a reputable attorney; right?

18 A. Correct. For -- you are talking about a  
19 civilian cases?

20 Q. Yeah.

21 A. Because there is more with law enforcement.

22 Q. Yes. So even though it seems like there were a  
23 lot of questions asked of Deputy Love and Forsyth as to  
24 the timing of the statements and there were questions  
25 asked of Sergeant Branham about the timing as well. Is it



1 fair to say that you do not take any issue with the fact  
2 that they did not provide statements until two days later?

3 A. I take no issue with that at all.

4 Q. Is it fair to say also that you do not take any  
5 issue with the fact that they were taken to Fairmont  
6 General Hospital to be evaluated?

7 A. I have no issue with that either.

8 Q. In fact you strongly recommend that any  
9 individual involved in a high stress event, whether a  
10 police officer or not, that they have a complete -- they  
11 have an examination; correct?

12 A. Absolutely.

13 Q. To make it easier for me I kind of put little  
14 letters beside each paragraph. But I will try to tell you  
15 if I am asking you about the paragraph.

16 The first paragraph says, about Deputy Forsyth losing  
17 sight of the jeep. Do you see that?

18 A. Are you talking about opinion one?

19 Q. Yes. Opinion one. The first paragraph that has  
20 the little dash. The first dash at the bottom of the  
21 page.

22 A. Oh, okay. Yes.

23 Q. I think you talked about this a little bit  
24 before. Because he didn't have sight of the jeep, it's  
25 your opinion and testimony that he actually wasn't in

1 pursuit of the jeep; is that right?

2 A. That is correct.

3 Q. You also mention about conflicting statements  
4 about the location of the access road. Do you see that?  
5 Kind of starting at the bottom of that page and continuing  
6 over to the next page?

7 A. Yes.

8 Q. You only reference page 2 of Deputy Forsyth's  
9 interview transcript. Do you know where the conflict is  
10 between his transcript, or his statement and Deputy Love's  
11 statement as about the access road? And I will tell you  
12 the page that you referenced. And if you have Deputy  
13 Forsyth's transcript, page 2 is what you referenced. His  
14 quote was, "There was an access road in the area where we  
15 lost the vehicle." My question was, that's what you've  
16 referenced, I want you to tell me where he says who  
17 actually located the access road in that particular  
18 statement.

19 A. In his original statement?

20 Q. Yes. You reference page 2.

21 A. Can you restate your question for me?

22 Q. Yeah. What I found on page 2 in Deputy  
23 Forsyth's statement, he references, he said, "There was an  
24 access road in the area where we lost the vehicle." What  
25 I am trying to figure out is where in that statement did

1 Deputy Forsyth say who actually located the access road.  
2 Because my understanding is, you're saying there is a  
3 conflict between what Forsyth and Love said about who knew  
4 where the access road was located.

5 A. My inference from him saying that he waited to  
6 make a U-turn because he went to the access road in that  
7 area where we had lost the vehicle. He said that he had  
8 located it and it was Deputy Love that said, well, no  
9 there is an access road back here and that he just -- he  
10 reversed. There was no passing vehicle. There was no --  
11 it was just he backed up and he told him that there was  
12 the access road off to the side. So it was Deputy Love  
13 that located the access road or identified it as they  
14 drove by it.

15 Q. Do you know if they are referring to the same  
16 road. There was Parrish Run. There was East Run. Do you  
17 know which road they are referring to?

18 A. They were on Parrish Run. So the access road  
19 would have been the road that they took and then that they  
20 identified in their statements as being the road that led  
21 to the gas well site.

22 Q. Well, let me ask this. You've agreed with me  
23 earlier that the moment an individual feels in a situation  
24 where they are facing the danger of great bodily harm or  
25 death that it's objectively reasonable for them to use

1 force that would result in great bodily harm or death,  
2 okay. So my question is, if that's kind of the premise  
3 that we are using to determine whether the force used was  
4 objectively reasonable, how does whether Forsyth, number  
5 one, was in pursuit of the vehicle or lost sight of it or  
6 not, have anything at all to do with whether he perceived  
7 or felt that he was facing serious harm or death at the  
8 gas well site?

9 A. It was my observation to show the conflicts in  
10 their statements and as they continued to grow throughout  
11 the encounter.

12 Q. But whether he lost sight of the jeep or was  
13 still in pursuit of it doesn't tell us what his state of  
14 mind was at the site when he fired the shots; right?

15 A. No. But if you were going to utilize the stress  
16 involved in being involved in a pursuit as part of the  
17 articulable variables involved in making a force decision  
18 because of the elevated stress and everything that comes  
19 from a pursuit. If you are no longer in a pursuit and you  
20 are just looking, that stress is diminishing. So their  
21 assertion of the pursuit, I think it is very important to  
22 consider the fact that you are not actively pursuing the  
23 vehicle. So the things that are happening to somebody  
24 during a pursuit, as the pursuit ends and you -- you start  
25 to relax, you start coming down. There are fluctuations.

1 So if the assertion is that the pursuit is one of these  
2 variables that led up, and based on my reviewing of their  
3 statements, the pursuit was a very important variable in  
4 his decision making process. Then I thought it important  
5 to prove -- or to show they are not. You are looking.  
6 You are actively searching. Once you find the vehicle,  
7 how the event unfolds from there, you now have another  
8 event. But the pursuit has ended. You are no longer in  
9 pursuit of the vehicle.

10 Q. How does any conflict in who located the access  
11 road have a single thing to do with whether or not Deputy  
12 Forsyth thought his life was in danger?

13 A. I thought that it went to showing that they  
14 weren't in pursuit and that if the pursuit is part of the  
15 catalyst for the decision making process that, that's a  
16 variable that is not impacting this process.

17 Q. If you assume what Deputy Forsyth described as  
18 occurring, that this jeep was moving toward him in an  
19 aggressive manner, okay, for purposes of this question.  
20 It wouldn't matter if it was Philip Rhoades driving that  
21 jeep or not, would it?

22 A. No, it wouldn't.

23 Q. So whether he knew whether it was Rhoades or  
24 not, if it occurred they way that Deputy Forsyth  
25 described, it wouldn't matter whether he was still

1 pursuing the jeep or not; right? If the jeep is driving  
2 at him; right?

3 A. It wouldn't matter if he is --

4 Q. If he had lost pursuit of the jeep and then saw  
5 the jeep in this clearing and it occurred the way Forsyth  
6 said, right, we look at what he was perceiving at the time  
7 that jeep was driving toward him; right?

8 A. Hypothetically if you are saying it occurred the  
9 way Forsyth said, then, yes.

10 Q. Then it wouldn't matter whether he lost sight of  
11 the jeep initially or not; right?

12 A. That's correct. Because it wouldn't be a  
13 variable in the event.

14 Q. And it wouldn't matter whether Forsyth located  
15 the access road or Corey Love located the access road,  
16 would it?

17 A. It would not.

18 Q. You also then have -- it's in the first full  
19 paragraph on the top of page 11. You talk about there  
20 being no ground disturbance. Do documented evidence of  
21 ground disturbance in support of the described vehicle  
22 movement.

23 A. Correct.

24 Q. Tell me what evidence you would see in a grassy  
25 area of a three point turn.

1           A.    At the speed -- with tires spinning or the three  
2 point turn?

3           Q.    The three point turn.

4           A.    Well, that particular portion I wouldn't --  
5 matted grasses. Depending on the grass height, vehicle  
6 weights. Things like that. Crush to the vegetation.

7           Q.    You told me that you have reviewed Sergeant  
8 Branham's deposition transcript.

9           A.    Correct.

10          Q.    And did you recall or see in his transcript  
11 where he was specifically asked by counsel for Mr. Rhoades  
12 estate to review photographs to see whether there was any  
13 evidence of tires spinning, do you recall that?

14          A.    Yes.

15          Q.    And he actually identified a photo, didn't he?  
16 Do you recall that?

17          A.    No. I don't recall that.

18          Q.    Okay.

19          A.    Of tires spinning?

20          Q.    Yes.

21          A.    I'd have to see -- I don't recall that.

22          Q.    The next paragraph talks about? "The vehicle  
23 movement was disputed by Deputy Love but the investigator  
24 did not follow up on this conflict." Would you agree with  
25 me that, and numerous places throughout, you say the

1 investigator did not seek clarification. The investigator  
2 did not follow up on certain things. Those would be  
3 criticisms you would have of the West Virginia State  
4 Police's investigation; correct?

5 A. Correct. He made no actual effort to verify or  
6 substantiate information to research information to  
7 actively -- he didn't -- and I don't fault Sergeant  
8 Branham. It became very clear he didn't understand what a  
9 force investigation should entail. He didn't even know  
10 why they were set in separate vehicles and -- because he  
11 didn't understand the variables that need to be looked at  
12 and investigated in a use of force. Especially a force  
13 event involving law enforcement.

14 Q. Let's talk about, you say that there was a  
15 conflict between the description of the vehicle movement;  
16 right? Essentially.

17 A. Which page are we on? I'm sorry.

18 Q. Page 11. It's the paragraph that starts the  
19 second full paragraph on the page.

20 A. Okay.

21 Q. Your testimony in this case is that you believe  
22 that there has been a conflict between the vehicle  
23 movement as described by Deputy Forsyth and his statement  
24 to the state police and Deputy Love and his statement;  
25 right?



1           A.     Well, I see a conflict in even Deputy Forsyth's  
2     because one minute it's sitting or parked to the left and  
3     then it's moving. But that's a minor issue in and of  
4     itself. Then there is the obvious conflicts between  
5     vehicle positioning and movement according to the  
6     statements provided by Deputy Forsyth and Deputy Love.

7           Q.     You would agree that two individuals, as we  
8     said, witnessing the same incident can see different  
9     things; right?

10          A.     It's possible, yes.

11          Q.     Because Deputy Forsyth, when he would have been  
12     operating a cruiser and entered the site where the jeep  
13     was located, he would have been on the driver's side  
14     obviously of the vehicle on the left hand side; right?

15          A.     Yes.

16          Q.     And he would have exited the vehicle on that  
17     side?

18          A.     Correct.

19          Q.     And Deputy Love would have been on the right  
20     hand side of the vehicle with a different perspective;  
21     right?

22          A.     Yes.

23          Q.     So you already agreed with me also, I believe,  
24     that individuals can forget things from a high stress  
25     event like a shooting; right?

1           A.     Yes.

2           Q.     So the fact that you claim Deputy Forsyth  
3 described the movement of the jeep -- I think what part of  
4 your -- the conflict you say exists is that, Deputy  
5 Forsyth described the movement of the jeep before he  
6 exited the cruiser and Deputy Love does not describe that,  
7 is that part of it?

8           A.     Conflict -- Deputy Forsyth clearly sees the jeep  
9 almost striking their patrol car. It never existed to  
10 Deputy Love. Deputy Forsyth sees the jeep making a three  
11 point turn. Doesn't exist for Deputy Love. Now, neither  
12 of them, the stress that they have to this point is a past  
13 pursuit. Neither of them describe the vehicle placement  
14 or movement the same.

15          Q.     But they have different perspectives; right?

16          A.     Different perspectives -- there are limits to  
17 what people can and can't see. And perspectives do  
18 change. But when you look at the size of the vehicle and  
19 you look at the field of performance for observation it is  
20 something that is curious and should be recognized and  
21 acknowledged that these are variations that are not  
22 explained.

23          Q.     Let me ask you. You have access to Deputy  
24 Love's statement?

25          A.     Oh, yes.

1 Q. And I've got to find it in your report. Your  
2 report indicates that Deputy Love said that the jeep was  
3 stopped to the left?

4 A. Yes.

5 Q. Find for me in Deputy Love's statement where he  
6 actually used the word, stopped, when he is describing the  
7 jeep to the left. The actual -- and let me ask this. You  
8 are referring to the transcription of the recorded  
9 interview of Love; right?

10 A. Yes.

11 Q. You are referring to the Love interview. I  
12 think it's page 7 and 8. I didn't write that down. But  
13 your report says 7 and 8. And you specifically use the  
14 word, stop. What I want you to find for me is where  
15 Deputy Love, when he is describing the jeep being to the  
16 left. Where he describes it as being stopped.

17 A. It was he said that it was off to the left and  
18 when he was asked by the trooper if the vehicle was moving  
19 and he said no, then that's where he said it was stopped  
20 it was off to the left. He never deviated from the  
21 placement. Deputy Love has consistently said the vehicle  
22 was off to the left 10 to 15 feet from the entry point to  
23 the gas well site.

24 Q. You say, Love said the jeep only came forward  
25 after Forsyth exited the vehicle; is that right? So

1 meaning, Deputy Love did not see the jeep moving before  
2 Forsyth exited the vehicle; is that right?

3 A. Are we talking about his original statement?

4 Q. The statement that he gave to Trooper Branham?

5 A. Yes. You're correct. Correct.

6 Q. Which is what you would have had at the time you  
7 prepared the report.

8 A. That is correct.

9 Q. So your opinion is, that Deputy Forsyth says the  
10 jeep was moving before he got out of the vehicle that it  
11 started to come at the cruiser. And Deputy Love said the  
12 jeep only came forward after Forsyth exited the vehicle;  
13 is that right?

14 A. No. No, ma'am. It is very clear in their  
15 statements that Deputy Love said that when they entered  
16 the jeep pulled forward almost striking the patrol car.  
17 Then backed up and tried to do a three point turn. Almost  
18 through the driver's door.

19 Q. Forsyth or Love?

20 A. I thought I said Deputy Forsyth.

21 Q. Okay, I think?

22 A. I'm sorry, it's Deputy Forsyth. I'm sorry. If  
23 I said Love I apologize. Deputy Forsyth is the one that  
24 said the vehicle came forward almost striking the patrol  
25 car but didn't hit it. And then backed up and did a three

1 point turn.

2 Q. So my question to you was, part of what you  
3 claim is a conflict between their statements is that  
4 Deputy Love did not describe that movement toward the  
5 vehicle when they first pulled into the well site; right?

6 A. He never indicated that movement, any of the  
7 movements for the vehicle's three point turn or almost  
8 pulling forward almost striking the patrol car. None of  
9 those at all.

10 Q. Do me a favor and look on page 12 of your  
11 report. It is the one, two, the third full paragraph down  
12 that says, "Deputy Love described the jeep's location."

13 A. Yes.

14 Q. It goes on the say, "Deputy Love described the  
15 jeep's location as being about 10 to 15 feet off to the  
16 left side and as soon as we pulled in he started coming  
17 out." So how did Deputy Love not describe that jeep  
18 moving before Deputy Forsyth got out of the car?

19 A. Well, I think what's really important, as you  
20 pull the paragraphs apart individually is, I'm providing  
21 the information provided by the statements. So there are  
22 conflicts in their statements that the investigator did  
23 not question or critically analyze to just try to find out  
24 even it was a memory issue. What ever the catalyst was  
25 for the conflicts, nothing was ever tried to be explained

1 or anything or investigated in that way. I am relating  
2 the information that's related from the statements and  
3 where the conflicts come in.

4 Q. But you told me was, part of the reason you  
5 believe there is a conflict is because Deputy Love had not  
6 described the vehicle as moving at any point in time  
7 before Deputy Forsyth exited the vehicle. And clearly in  
8 his statement he says, "and as soon as we pulled in he  
9 started coming out." Correct?

10 A. That would be where he is based by the corner.  
11 Yes. That is correct. That's -- that's what he said.

12 Q. So Deputy Love did describe the jeep as moving  
13 before Deputy Forsyth exited the vehicle. If he says, "as  
14 soon as we pulled in he started coming out."

15 A. Later in his interview, past that point where he  
16 made this statement, and I am relating the statements as a  
17 neutral party reads through the documents and they review  
18 and evaluate, these conflicts and statements would have  
19 been wonderful to have clarification on. There wasn't  
20 any. So in articulating this, it is pointing out the  
21 conflicts in the statements. The things that lead one to  
22 believe based on all these conflicts and nobody looking  
23 into it. Nobody investigating it. Nobody verifying  
24 information. It leaves you with one outcome. Because if  
25 the physical evidence doesn't represent what's being

1 explained, and again, you know, you go back to, this  
2 person's perception is the most important part. And it  
3 is. But that perception has to be based on facts. On  
4 information. Even if that information later turns out to  
5 be not what you expected it to be or not what you thought  
6 it was at the time of that moment in time, you still have  
7 to have the basis for forming the initial perception. And  
8 that's what justifies the application of force.

9 Q. Well, as I've understood your report, your  
10 report focuses on conflicts between Forsyth and Love's  
11 statements?

12 A. Correct.

13 Q. I don't, unless I missed it, and I read through  
14 this over the weekend again, I don't see any specific  
15 place where you say there was any conflict within Deputy  
16 Love's statement. Which is the answer you just gave me  
17 when I asked about him saying the vehicle moved forward as  
18 soon as we started pulling in.

19 A. I was focused -- am focused on Deputy Forsyth.  
20 Deputy Forsyth is the individual who discharged his  
21 firearm. In looking at all of the statements, I  
22 articulate in my report what I read in the statements.  
23 And how that influences the opinions that I'm presenting.

24 Q. And that's fair enough. But part of the basis  
25 of your opinion that the use of force was not objectively

1 reasonable is because there are, what you say are  
2 conflicts between what Forsyth and what Love said; right?

3 A. Correct.

4 Q. If you believe there are conflicts between what  
5 Love said in his own statement why would you not include  
6 that in the report. Even if he's not the one that did the  
7 shooting?

8 A. If the focus of my opinions was on Deputy Love's  
9 violations of policies, his potential violations of not  
10 being forthcoming with information, whatever the case  
11 might be for an internal investigation, that would be  
12 different. My -- I'm focused on the use of force and the  
13 things that are taking place in that car. The  
14 misinformation as it turns out later that has been  
15 provided. So, I mean, even these statements now, you  
16 know, now that I have gotten the -- just received the  
17 deposition from Mr. Love, there hasn't been any time to  
18 formulate a supplemental report and to provide one. And  
19 that's why when you ask me, I said at this time I am not.  
20 There is still more information coming in. I would be  
21 happy to provide a supplemental once I know, okay, well,  
22 if we are going to provide a supplemental for every single  
23 time if that's what the client wants then that's what I  
24 will do. Be we are still trying to gather information.  
25 So these are the statements made initially. And I might



1 add, these are the statements made initially by two  
2 individuals that took the time needed to decompress, to  
3 gather their thoughts and formulate the information to  
4 written statements they read during an interview.

5 So I am just relaying the information as it is  
6 presented in their statements. And I didn't need to focus  
7 on just Deputy Love's discrepancies. Because Deputy Love  
8 didn't use force in this event.

9 Q. But you are focusing on what he said to address  
10 what you assert or perceive conflicts between what he and  
11 Forsyth said; right?

12 A. That is correct.

13 Q. In that answer that you provided you also said  
14 something about, we now know that there has been  
15 misinformation that's been provided. What misinformation  
16 has been provided?

17 A. For example, the fact that whether the catalyst  
18 for the application of force was based on knowledge -- one  
19 of the variables involved in making a force decision is  
20 your knowledge of the individual. And whether or not he  
21 had active warrants, whether or not he did certain things,  
22 now we are finding out as we go through in deposition  
23 that, no, at least Deputy Love, for example, didn't know.  
24 And then there was what Deputy Forsyth -- you know what, I  
25 am going to pause right here because as I do my reviews,

1 and this is not my process, I will be happy to submit a  
2 supplemental report articulating them because one, I don't  
3 want to misstate one of the variables that I have observed  
4 in the supplements that I've received since. So I will  
5 leave it with, I will supplement this to articulate the  
6 ongoing information that either supports or doesn't  
7 support my opinions presented or creates new ones.

8 Q. And to the extent that you do, I may reserve the  
9 right to re-depose you.

10 A. Absolutely.

11 Q. With regard to that part of the statement, you  
12 said you have reviewed Deputy Loves deposition. You said  
13 apparently he didn't know what the warrants were. Does it  
14 matter? He wasn't the one that did the shooting was it;  
15 right?

16 A. For him?

17 Q. Yeah.

18 A. No.

19 Q. So it doesn't matter whether Deputy Love knew  
20 that there were outstanding warrants and what those  
21 warrants were, does it?

22 A. It actually does. Because if you are looking at  
23 a case based solely on statements. Solely on statements.  
24 For example, if this event had taken place in the middle  
25 of a concrete parking lot in the middle of nowhere, you

1 would only have the version of events presented by the  
2 officers. Because you would have a potential for none of  
3 the roadway evidence that you would see in this particular  
4 event. But there was a very large amount of information  
5 that could be acquired from the scene that should  
6 substantiate the statements that are being made. So if  
7 there was nothing to substantiate the physical evidence,  
8 the statements being made become important because you  
9 have to make a determination as to whether or not you're  
10 -- you're getting the information relative to what  
11 actually took place.

12 Q. So going back to the discussion that you and I  
13 just had. You believe that whether Forsyth -- or whether  
14 Love know whether there were warrants or not is important,  
15 but whether there was a conflict in his own statement  
16 wasn't something that you needed to include in your  
17 report; is that right?

18 A. No. That's not what I'm trying to say. And  
19 apparently I am failing at explaining it to you.

20 Q. The next, it is the third full paragraph on page  
21 11 of your report. It talks about Deputy Forsyth stating  
22 at that point, "the engine did begin revving, tires spun  
23 and the vehicle started moving towards me in an aggressive  
24 manner." Do you see that?

25 A. Yes.

1 Q. Your opinion is that there was no documented  
2 evidence of any ground disturbance, which we have kind of  
3 talked about; right?

4 A. That is correct. At the time that this is  
5 written that is correct.

6 Q. Now, and I want to clarify a question that I  
7 asked you, cause I may have misstated. Deputy Branham was  
8 specifically asked -- Sergeant Branham was specifically  
9 asked in his deposition about photos that were taken of  
10 the scene and he was asked by counsel for the Estate as to  
11 whether there was any photo that he thought actually  
12 showed aggressive driving by the jeep, okay. And at page  
13 115 and 116 of his deposition he identified a photo that  
14 he thought possibly could show aggressive driving. So  
15 you're saying that there is no documented evidence of any  
16 ground disturbance and the Sergeant who investigated it  
17 was asked specifically in his deposition under oath and he  
18 found a picture and pointed it out to counsel. You don't  
19 recall that in his deposition?

20 A. I missed that in his deposition. And I would  
21 like to know what photograph it is that he's asserting now  
22 that shows that. Because I would like to see the  
23 photograph that shows the aggressive driving of this  
24 individual. And I'm praying it's not the assertion that  
25 the photograph toward the entry way in which the vehicle

1 was in it's final resting position was proof of  
2 acceleration as described by them. Because in that  
3 particular photograph there is a lot of information that  
4 could have been looked at but given the location in which  
5 they articulated the tires spinning and all that took  
6 place, it wasn't at its point of rest. So I would need to  
7 look at what photograph. And I'm sorry, I have absolutely  
8 no idea how I missed that. But I would say that I will be  
9 sure -- and you said it was page --

10 Q. 115, 116.

11 A. 115, 116. I will look at that because I would  
12 like to know what picture that is so that I would better  
13 review it from his perspective to consider it in my  
14 opinions.

15 Q. You also in this paragraph state that the  
16 investigator did not follow up on this conflict and seek  
17 clarification of what "aggressive manner" meant. Do you  
18 see that in your report?

19 A. Absolutely.

20 Q. Again, that is a criticism of the West Virginia  
21 State Police Investigation, who you understand is not a  
22 party to this case; right?

23 A. I do. And I don't doubt that at all.

24 Q. So if Deputy Forsyth described the vehicle as  
25 the engine revving, the tires spinning and the vehicle

1 started moving towards me, you don't think that's enough  
2 of a description of what he meant by aggressive manor?

3 A. It sounds like a checklist.

4 Q. What do you mean, sounds like a checklist?

5 A. Well, when I read on the 25th how they clearly  
6 articulated the vehicle accelerating, tires spinning, mud  
7 flying and all that, and through thirty years of  
8 experience, there are certain variables that people  
9 articulate. Law enforcement is very well trained that,  
10 what is an aggressive manner. That is not an articulation  
11 of something. It is an aggressive manner. It's a car  
12 coming toward me. Tires spinning. The coming toward me  
13 in an aggressive manner. Engine revving. Okay, engine  
14 revving, checklist. Tires spinning, because it's rapidly  
15 accelerating. These are all flying into a narrative.  
16 Fine, as long as the physical evidence at the scene  
17 supports the narrative. Zero issue with that. But when  
18 those descriptors are provided and there isn't physical  
19 evidence that shows it, one must question the validity of  
20 the information being provided. Or investigate why it's  
21 possible that, that didn't happen.

22 Q. Is it your testimony in this case that you  
23 believe before Deputy Forsyth provided the statement to  
24 Sergeant Branham on August the 4th that he reviewed  
25 documents from the July 25th chase to make sure that he

1 had those points from the checklist in there in his  
2 description?

3 A. No.

4 Q. Would you agree with me that someone can drive a  
5 vehicle aggressively toward another individual without  
6 spinning the tires?

7 A. I agree somebody can drive it toward them.  
8 Again, you're putting in the word aggressively.

9 Q. Well, I mean, you said that the police officer  
10 didn't follow up as to the description of aggressive  
11 manner in that there is no ground disturbance that you  
12 believe is evidence by the photographs; right?

13 A. Yes.

14 Q. My question is, do you believe that someone can  
15 drive a vehicle towards you in an aggressive manner and  
16 they don't have to be spinning the tires to cause ground  
17 disturbance?

18 A. You have not defined what aggressive manner  
19 means. Can somebody drive towards you without spinning  
20 the tires, yes. You are asking me to agree to aggressive  
21 manner. And I want to know how you define aggressive  
22 manner.

23 Q. How do you define it?

24 A. It's not up to me to define that. That's an  
25 individuals perception. I don't define motor vehicles

1 moving in an aggressive manner. Vehicles move. If you  
2 are being targeted by a vehicle, the vehicle is coming at  
3 you trying to kill you. Trying to run you over. An  
4 aggressive manner, what does that mean. That was the  
5 reason that he didn't -- he didn't ask that question.  
6 What do you mean by aggressive manner?

7 Q. Well, Deputy Forsyth said the vehicle was moving  
8 toward him, didn't he?

9 A. He did.

10 Q. The next paragraph you also say -- you talk  
11 about Deputy Forsyth said he again ordered the vehicle to  
12 stop and allowed audible voice. The vehicle did not stop,  
13 slow, veer or slow down. And you said the investigator  
14 did not question Deputy Forsyth's perception of the  
15 vehicles' movement. That is also a criticism you have of  
16 the West Virginia State Police's investigation; correct?

17 A. Sure.

18 Q. The next paragraph at the bottom of page 11 that  
19 continues over the top of page 12. And this is a conflict  
20 as to whether Forsyth knew it was Rhoades or not. My  
21 question to you is, how does whether Forsyth knew it was  
22 Rhoades or not equal the fact that he was not in fear of  
23 his life if the jeep was driving toward him? You've  
24 already told me it's doesn't matter who was driving the  
25 jeep; right?



1           A.     That's correct. Did you want me to answer the  
2 first question? Cause you posed two questions there. You  
3 had one and the followed up by a second one.

4           Q.     If you can remember the question because I  
5 cannot.

6           A.     How does it impact whether he knew or not.

7           Q.     Yeah, okay.

8           A.     Well, first of all the most basic impact, he is  
9 a police officer pursuing what he articulates as being a  
10 wanted felon for attempted murder of a police officer.  
11 And he chose to get out in front of, and stand in front of  
12 the man with the weapon. Horrible tactical decision  
13 placing himself into a position that forced him to use  
14 deadly force to protect himself for a failure to take an  
15 kind of real position of advantage or even try to maintain  
16 a position of advantage with his motor vehicle. So  
17 whether or not he knew it was Rhoades leading up to it, if  
18 he knew that it was Rhoades and he had all this  
19 information about how violent and everything else he is,  
20 his tactical decisions were terrible given that knowledge.  
21 If he didn't know that it was Rhoades, he still made  
22 horrible tactical decisions that placed him in a position  
23 that opened himself up. That opened himself up.

24          Q.     If he knew it was Rhoades, and as you said you  
25 believe he made a horrible tactical decision, that still

1 doesn't mean that he was not in fear for his life; right?

2 A. One cannot interject -- and we can find a  
3 plethora of articles. Nobody studies this because it  
4 would cost too much, probably. But you do not place  
5 yourself in the position to be the subject of deadly force  
6 knowing that openly, here, I am using myself as a  
7 barricade against a vehicle, and then use deadly force to  
8 defend yourself because now you are saying this person is  
9 trying to kill me.

10 Q. So the situation we talked about, the shooting  
11 that you had where the police officers went into the bar  
12 where there was an armed suspect, they were placing  
13 themselves in harms way, were they not?

14 A. See now you are comparing two different animals.  
15 You're talking about making entry into a building where  
16 there's a known armed individual. You have to go in. You  
17 don't have a choice. There is no other options. In order  
18 to get inside the -- the building to stop somebody from  
19 using force against others you must enter. You don't have  
20 a choice. In traffic stops you have control. You have a  
21 choice. You can make a choice. You can dictate the stop.  
22 If the bad dictates the stop you can utilize your vehicle  
23 for tactical advantages. There are a lot of things that  
24 could have been done. And the fact that he knew he was  
25 dealing with this armed felon that who allegedly attempted

1 to kill another police officer, that did not appear to  
2 play any role in his tactical decision making. He placed  
3 himself in a position that he opened himself up to be  
4 seriously hurt or killed by someone. Not because it was  
5 something that was mandated by the job or in the  
6 protection of the community because of the potential  
7 pursuit that followed but that was a decision he made.  
8 Opening himself and stepping in front of that vehicle.

9 Q. You saw in his statement where he stated that  
10 the vehicle, when he saw the jeep, the vehicle was  
11 traveling in the opposite direction, swerved into the  
12 oncoming lane of traffic and almost hit another vehicle;  
13 right?

14 A. Did I see that written in his statement?

15 Q. Yes. Yes.

16 A. I did.

17 Q. Are you saying that -- you kind of made a face.  
18 Are you saying that you don't believe that occurred?

19 A. Well, lets say I question it based on the fact  
20 -- well, let me -- Mr. Faulkner was nice enough to point  
21 out a study on vision acuity and things think that, that  
22 he acquired through For Science, and the fact frophobia  
23 (Phonetic) which is the focal point. If you go a maximum  
24 of three degrees of vision accuracy. So in the statement  
25 being made, in the time it takes to monitor traffic around

1 you, get yourself turned around and get caught up to a  
2 vehicle, you are still able to see a vehicle doing all of  
3 the other things while focusing on on-coming traffic for  
4 you. Two opposite directions.

5 Is it suspect, yes it is. It is. And given the amount  
6 of times that we've seen this transition with information,  
7 his turning around at that point, the additional elements,  
8 I question.

9 Q. So are you saying he's lying?

10 A. I am saying that these were elements that are  
11 unique and should be looked at.

12 Q. Are you saying that you do not believe Deputy  
13 Forsyth was truthful in his description in his statement  
14 to Sergeant Branham? Simple question.

15 A. I'm saying that I don't believe every element  
16 that he put into his statement. No.

17 Q. So when I asked you the question whether or not  
18 Forsyth knew it was Rhoades, let me ask you, how does that  
19 equal the fact, again, that he was not in fear for his  
20 life when he fired the shots to stop the jeep? If you  
21 believe his version of events.

22 A. If you believe his version of events minus all  
23 the other information, minus the physical evidence and  
24 everything -- if you ignore everything but the statement  
25 made by the officer, the articulation of that, I wouldn't

1 say it was not possible.

2 Q. So It wouldn't matter who was operating the jeep  
3 at that point whether it was Rhoades or not; right?

4 A. At that stage of the encounter, given the  
5 information minus everything else, it would not matter.

6 Q. Then we've also discussed, it's the top of page  
7 12 the first full paragraph about the statement that  
8 Mr. Rhoades was not going back to jail. And you had that  
9 the investigator made no effort to determine who that  
10 source was or where that information came from. Again,  
11 that's a criticism in the state police investigation;  
12 correct?

13 A. It is because it goes to the information being  
14 presented about justifying concerns over an individual.

15 Q. At this point you have no information that  
16 contradicts what Deputy Forsyth claimed he knew, right?

17 A. I'm not -- I don't have anything that  
18 contradicts what he said, no.

19 Q. And if he believed that Rhoades, who had tried  
20 to run over a police officer the week before --

21 MR. EDWARDS: Objection to form.

22 Q. -- stated that he was not going back to jail,  
23 wouldn't that be a factor that you would consider in  
24 whether a threat was becoming imminent to make the  
25 decision whether you needed to use force or not?

1           A.    If I had it from a credible resource, yes.

2           Q.    So you're saying Deputy Forsyth is not credible?

3           A.    I didn't say that. I said if I had the  
4 information -- you asked me if I would take that and  
5 interpret it. I said, if I have it from a credible  
6 resource, yes, it would play into that. I didn't say he's  
7 not credible. I said it was never examined or checked  
8 into or investigated. That's what I said.

9           Q.    Are you taking that statement about Deputy  
10 Forsyth saying Rhoades was not going back to jail into  
11 consideration in formulating your opinions in this case?

12          A.    Of course. You have to look and consider  
13 everything.

14          Q.    You've also, and you mentioned this in part of  
15 your discussion when you were talking about Deputy  
16 Forsyth's tactical decisions, you say that, "his actions  
17 placed him in a dangerous situation and at a tactical  
18 disadvantage." Right?

19          A.    On the next opinion, yes.

20          Q.    But you've agreed with me earlier that part of  
21 the duties of a law enforcement officer actually requires  
22 them to place their selves in tense and dangerous  
23 situations; right?

24          A.    I agreed that the job requires that. But your  
25 decision should prevent it from happening unless it's

1   necessitate by a specific event. The decision to do it on  
2   your own, I don't agree with that. And the fact that the  
3   job does require law enforcement to take tremendous risks,  
4   which is why we harp so hard on training and making sure  
5   that we are aware of how we can mitigate those risks to  
6   the best of our ability. Or I guess I should say to the  
7   best of their ability.

8           Q.    I think it's the one, two, three. The third  
9   full paragraph says, "Deputy Love described the jeep's  
10   location." And then about the investigator asked Deputy  
11   Love if the jeep was, "trying to get, like, back out of  
12   the road that you all came in." Do you see that?

13          A.    Yes.

14          Q.    Tell me what that particular piece of  
15   information has anything to do with whether Deputy Forsyth  
16   feared for his life at the time he fired the shots into  
17   the jeep.

18          A.    To me in reading that, unfortunately it wasn't  
19   investigated further. But in reading that he indicated  
20   that the vehicle was close to the exit, exactly where it  
21   was at the time that it was found post-shooting. Which if  
22   his perception was the vehicle was trying to get away.  
23   Trying to get back out on to the road and that was his  
24   perception inside the vehicle, that means that he knew or  
25   his perception was the vehicle wasn't trying to run over

1 Deputy Forsyth. From his perception. For example, if you  
2 look at the photographs provided by Sergeant Branham, the  
3 jeep's front left tire is turned toward the roadway. Not  
4 toward straight where the patrol car came in but angled  
5 left. So that would also be supportive of trying to go --  
6 and it would put him more into the bushes. Not more into  
7 the opening, which would be the apparent, possible  
8 location since nobody ever bothered to ask, actually try  
9 to put Deputy Forsyth at a location, unfortunately, to  
10 know whether or not that vehicle was actually angled in a  
11 position that it would have missed him. That was never  
12 looked at. But in this particular element, I was just  
13 articulating that it appeared from his perception that,  
14 yes, he was going to leave.

15 Q. And the statement again that we talked about,  
16 you quoted from Deputy Love's statement to the state  
17 police, that actually supports Forsyth's statement that  
18 the vehicle was moving before he got out of the cruiser;  
19 right?

20 A. If you want to say that the vehicle was moving  
21 at its point of rest. Then what you're saying is correct.  
22 But if you are trying to say that the vehicle was moving  
23 in all the other directions that Forsyth -- I don't see  
24 how those two verify one another.

25 Q. Well, one of the things as we've talked about,



1 you say in your report is that Love says the vehicle  
2 didn't move until Forsyth actually got out of it, okay.  
3 This statement seems to indicate that the vehicle was  
4 moving before Forsyth ever exited the vehicle. If he  
5 says, "as soon as we pulled in he started coming out." He  
6 doesn't say Forsyth has exited the cruiser yet, does he?

7 A. Correct.

8 Q. The bottom paragraph on page 12 you talk about  
9 Deputy Forsyth would have begun discharging his firearm  
10 within seconds of exiting the police vehicle, you see  
11 that? And then you talk about that the investigator did  
12 not follow up on the conflict in the evidence. Even at  
13 the very end you say this is another conflict not  
14 investigated by --

15 A. Yes.

16 Q. -- by the investigator.

17 Pages 13 and 14 of your report, I am not going to go  
18 through each paragraph. But it starts at 13.

19 The first full paragraph that starts, "despite." And  
20 then there are a number of instances down throughout all  
21 the way to the bottom of the page. "The investigator made  
22 no documented effort to explore the information. The  
23 investigator never asked deputy Forsyth. The investigator  
24 did not question". All of those things, those all appear  
25 to be criticisms, again, you have of the West Virginia

1 State Police Investigation; right?

2 A. Those are, yes.

3 Q. But simply because you believe that the  
4 investigation conducted by the state police is not  
5 sufficient, that doesn't mean that Deputy Forsyth did not  
6 have an objectively reasonable fear for his life. The  
7 simple fact that you disagree with the way they conducted  
8 the investigation doesn't mean that Deputy Forsyth didn't  
9 have an objectively reasonable fear for his life; right?

10 MR. EDWARDS: Object to the form. You can  
11 answer.

12 A. My statements of inadequacies for the  
13 investigation to try to verify that information doesn't  
14 change what he has said in his statements.

15 Q. So it doesn't mean that if he says that he had  
16 this objectively reasonable fear just because you  
17 disagreed with the state police conducted it, doesn't mean  
18 that he wasn't in fear and that fear was objectively  
19 reasonable; right?

20 A. Well, I'm not going to say that, no. Because he  
21 has said he is in fear. And again, fear justifies force.  
22 Facts make fear reasonable. Just because he has said it  
23 doesn't make it so absent supporting information. My  
24 interpretation of their investigation identifying the  
25 things that would have gone a long way to support a

1 narrative were never even looked at. That is my pointing  
2 out why based on the totality of this that I don't feel it  
3 was objectively reasonable. So I am not going to sit  
4 there and say that absent my evaluation he was doing the  
5 right thing. I am going to say that based on what he has  
6 written, that is what he has said.

7 Q. One of the things that we talked about early on  
8 about the Daubert hearing you had to testify to, I think  
9 it was in West Virginia, where you said the judge wouldn't  
10 let you testify about whether the persons fears were  
11 objectively reasonable; right? Isn't that what you told  
12 me?

13 A. In a criminal case.

14 Q. Do you have a belief that you can testify in  
15 this case as to whether that Deputy Forsyth's fears were  
16 objectively reasonable?

17 A. I believe so.

18 Q. You don't think that's the ultimate issue for a  
19 jury to decide?

20 A. I believe that counsel has representation. Both  
21 sides present their case to the jury. Both sides are  
22 responsible for educating the jury about the variables to  
23 be considered. And the jury has the final say.

24 Q. It's your opinion based on your review and  
25 criticisms of the state police that you don't believe that

1 the fear was objectively reasonable; right?

2 MR. EDWARDS: Object to form.

3 A. I'm saying that based on the information  
4 provided in the investigation I don't believe it was  
5 objectively reasonable to shoot and kill Mr. Rhoades.

6 Q. And you understand that the state police looked  
7 at this and determined it was. And there is another  
8 individual, Mr. Faulkner, who's looked at it that believes  
9 that there was an objectively reasonable fear; right?

10 A. If people would like to look at the information  
11 and review it in a noncritical way and just accept it at  
12 face value from statements and ignore all the physical  
13 evidence, they can come to whatever opinion they would  
14 like to. I chose to look at the totality of the event and  
15 all the information presented to me and I form my opinions  
16 based off the case information I receive.

17 Q. Would you agree with me that, like, if a police  
18 officer is investigating the incident, that each officer  
19 may investigate a incident somewhat differently than you  
20 would. Just like an attorney may defend a case  
21 differently than another attorney would?

22 A. Sure there is going to be differences.

23 Q. Just because they are criticisms and things that  
24 you think that the state police should have done, again,  
25 doesn't negate the fear that Mr. -- or that Deputy Forsyth

1 claimed?

2 A. He can claim whatever he would like to claim.  
3 It's -- just because they didn't do something -- they  
4 didn't look at physical evidence. They didn't scrutinize  
5 statements. They didn't look at things that weren't  
6 lining up with each other so that the basic investigator  
7 could understand, let alone an investigator that's  
8 investigating the application of deadly force by a law  
9 enforcement professional. But Deputy Forsyth can  
10 articulate whatever he believes.

11 Q. Is it your testimony that Deputy Forsyth is or  
12 was lying when he says the jeep was moving toward him and  
13 he had to fire to stop that jeep from hitting him?

14 A. It is not possible to stop the vehicle --

15 Q. My question --

16 A. Can you restate your question.

17 Q. My question was, do you believe that Deputy  
18 Forsyth is lying when he says that he was in fear for his  
19 life and he fired into the jeep to stop the jeep from  
20 hitting him. My question is do you believe he's lying  
21 about that?

22 A. Based on the information revealed to me through  
23 the course of this investigation that was conducted by the  
24 West Virginia State Police, I do not believe that the  
25 description provided by Deputy Forsyth actually took place

1 that way. And for that to be the case, there is  
2 misinformation somewhere. But because nothing was tried  
3 to be verified, nothing was looked at, nothing was  
4 actually investigated to look at the case in an  
5 investigative way, whether he's lying or not is my  
6 perception right now, that his use of force was not  
7 objectively reasonable given what I have reviewed.

8 Q. My question is, do you believe he's lying?

9 MR. EDWARDS: Asked and answered.

10 MRS. DURST: No, he hasn't answered it. He  
11 said whether he's lying or not.

12 BY MRS. DURTS:

13 Q. Do you believe he's lying? That's my question.

14 A. I don't believe that he is relating the event as  
15 it happened. So, yes, I believe that if -- if he is  
16 providing us with this information that is clearly  
17 contradicted by scene evidence, then he has to be  
18 misinforming us.

19 Q. Do you agree that there was no question that  
20 Sergeant Branham asked Forsyth or Love that they refused  
21 to answer?

22 A. That Sergeant Branham asked them question --  
23 they did not refuse any of his questions.

24 Q. You refer in your report, it's on page 13, to  
25 the prepared written statements read by the deputies in

1 their interviews. I don't see where they read the  
2 statements in the interviews. I see a question and answer  
3 by Sergeant Branham in the interviews. So was your  
4 opinion -- was your report -- was that an incorrect  
5 statement that they provided statements to Branham and  
6 then he asked them questions, or do you believe they  
7 actually read the written statement that's part of that  
8 transcript?

9 A. I believe that they read that statement and  
10 there were intermittent questions but they focused back in  
11 on the statement and statements.

12 Q. So you disagree that the transcripts that you  
13 had were actually just only a question and interview  
14 session? Meaning that they read an entire prepared  
15 statement and then he asked them questions, is that what  
16 you are saying?

17 A. I didn't say that.

18 Q. So you believe they were reading from the  
19 statement and then he would ask a followup question, and  
20 then they would go back to reading the statement?

21 A. Correct. And there is information if you look  
22 at, for example, Deputy Love, when he provided his  
23 statement, in the middle of the statement when he was  
24 interrupted by the Sergeant, the next thing you read was  
25 the exact same sentence he already read and then continued

1 on. So that is how I come to that conclusion.

2 Q. You also have on page 13 that the state police  
3 did not document any effort being made to consider the  
4 viability of the information presented by Forsyth in  
5 contrast with what was clearly seen at the crime scene.  
6 That's on page 13. Other than your opinion that there was  
7 no ground disturbance, tell me what was clearly visible at  
8 the crime scene that was in contrast with the information  
9 that Forsyth provided.

10 A. When you start looking at the gas well site and  
11 the fact that there was a small pipe that comes up to the  
12 left of it, he is making a three point turn. There was no  
13 attempt to -- if it's happening directly in front of the  
14 well site that doesn't make any sense. Because he was  
15 already forward facing. And then if he is backing the  
16 jeep up and he's going, where is he backing it to.  
17 Because there is a pipe. Not just the big pipes that come  
18 out, but there is a small pipe sticking up out of the  
19 ground that doesn't appear to have made contact with the  
20 jeep in any way. Unless it was not documented and  
21 pictures don't demonstrate that the pipe nor the jeep are  
22 damaged at those levels. So looking at that, looking at  
23 the fact that where the jeep's final place of rest was  
24 versus where they said that he accelerated from or implied  
25 that he accelerated from to be able to get to that point,



1 there was nothing on the ground in that area that  
2 represented an acceleration. Ground disturbance,  
3 something. Because when a jeep -- especially in that high  
4 of grass in order to get moving you are going to have to  
5 give it gas. You are going to have to stand on it. For a  
6 lack of a better term. I don't know how else -- you're  
7 going to have to use more accelerator to get it moving.  
8 So if there is the rapid acceleration that they described  
9 in their statements and the spinning of tire -- that was  
10 not represented there.

11 Q. We already talked about Deputy, or Sergeant  
12 Branham identifying the photograph in his deposition that  
13 he identified as possibly showing aggressive driving, but  
14 you didn't notice that in his deposition?

15 A. I did not notice that in his deposition. And I  
16 don't know how I missed that. But, again, I will look at  
17 that and consider it.

18 Q. You also have on page 13 about Sergeant Branham  
19 not questioning about the standard transmission jeep being  
20 in gear and running. If my recollection is correct,  
21 Branham never said the jeep -- and I wanted to make sure  
22 and I thought maybe it was in his statement. You said,  
23 "The investigator did not question or consider how the  
24 standard transmission jeep could be in gear and running  
25 when he arrived on the scene." I don't recall Sergeant

1 Branham saying the jeep was in gear. Do you recall that  
2 from the state police report?

3 A. No. That was taken from the statements from the  
4 fact that the vehicle was accelerating toward him. And if  
5 it was a standard transmission and at the time that the  
6 Sergeant arrived the vehicle was running and not in gear,  
7 how did it get out of gear and still be running.

8 Q. Well, again, if my recollection of the state  
9 police report is correct, Sergeant Branham's report says  
10 it appears the jeep is running. The cruiser, he says, was  
11 in fact running. He says the jeep appears to be running.  
12 Do you recall that distinction in his report?

13 A. We are splitting hairs now. If an investigator  
14 goes there and he doesn't know whether a vehicle is  
15 running or not and he puts in there that it appears to be  
16 running, it's not a very difficult thing to verify and to  
17 know. So I'd have to look and see. I don't know if he  
18 says appears to be running. I don't recall that  
19 specifically.

20 Q. Did you see in Sergeant Branham's investigation,  
21 or his deposition, I'm sorry, that he's never driven a  
22 standard transmission, has no idea really how one works?  
23 Did you see that?

24 A. In Branham?

25 Q. In Branham's, yes.

1 A. Okay.

2 Q. Did you see that?

3 A. In his deposition?

4 Q. Yes. In his deposition transcript.

5 A. I don't recall if I read that or not. Well, I  
6 had to have read it.

7 Q. Would you agree with me that there is no  
8 evidence in this case that Deputy Forsyth did not issue  
9 the verbal command that he claims that he issued?

10 A. No.

11 Q. In fact, Deputy Love confirmed that Forsyth  
12 actually was giving verbal commands to the driver of the  
13 jeep; right?

14 A. During his initial statement in his second  
15 interview he has to be reminded of it and then he recalled  
16 something was said but he didn't know what.

17 Q. In the initial statement he gave to the state  
18 police two days after he confirmed that he heard Forsyth  
19 issuing commands; right?

20 A. In that statement he did.

21 Q. One of the factors when we talked whether, you  
22 know, we were looking to determine whether a threat was  
23 imminent that would cause you to make a decision to use  
24 force is, a suspect refusing to obey commands; do you  
25 recall that?

1 A. Yes.

2 Q. If the suspect is refusing to obey commands to  
3 exit a vehicle by a law enforcement officer, is that a  
4 crime?

5 A. If a suspect?

6 Q. Yeah. If someone who has active warrants and  
7 the police officer is ordering him to exit the vehicle and  
8 they refuse to follow those commands, is there any kind of  
9 crime committed by that?

10 A. Oh, sure. Absolutely.

11 Q. On page 14 of your report you are talking about  
12 Sergeant Branham, I think it's in the -- I am trying to  
13 remember if it's in the summary part at the bottom. It's  
14 talking about Sergeant Branham was unaware that Deputy  
15 Love was actually the victim or the alleged victim of the  
16 incident that occurred that resulted in the warrant for  
17 the attempted murder of the police officer; do you recall  
18 that?

19 A. Yes.

20 Q. Whether Branham was made aware of that or not  
21 doesn't mean that Forsyth wasn't in fear; right? Whether  
22 Branham knew it after the fact or not has nothing to do  
23 with that; right?

24 A. That's correct.

25 Q. Because it's not what Branham knew, it's what

1 Forsyth believed?

2 A. Correct.

3 Q. If the incident occurred the week prior the way  
4 that we see it on video and the way it was described, that  
5 would seem to support Forsyth's fear for his own life;  
6 right?

7 A. I'm sorry. There is video of the -- of the shot  
8 being fired and the attempted homicide?

9 Q. No. The chase. The vehicle.

10 A. Oh. Well, you said the incident on that date  
11 and then said that it unfolded. There was a pursuit.

12 Q. Yes.

13 A. But that has nothing to do with an attempted  
14 murder. I thought you were telling me there was video of  
15 that. I am like, oh well, I have not seen that video.

16 Q. Well, I haven't seen it either, so.

17 A. Okay.

18 Q. I am trying to read my notes, so just bare with  
19 me. I might have to get my glasses out too.

20 A. My eyes have already told me, you are too old to  
21 keep doing this without me.

22 THE WITNESS: It's getting warm in here.

23 MRS. DURST: It's hot. It's hot.

24 MR. EDWARDS: That's what happens when you  
25 make a complaint.

1 BY MRS. DURST:

2 Q. Would you agree with me that the incident that  
3 was described in the warrant that was issued for  
4 Mr. Rhoades for the July 25th incident would be consistent  
5 with the way Forsyth and Love described the August 2nd  
6 incident of Rhoades driving the vehicle at them?

7 A. Well, they are similar in the fact that they  
8 both allegedly used a vehicle to assault, potentially.

9 Q. Well, in fact, the charge was actually attempted  
10 murder of a police officer from the July 25th incident  
11 right?

12 A. That's what they charged him with.

13 Q. Page 14 of your report also says that there was  
14 no weapon seen in Mr. Rhoades possession. That's not  
15 exactly true; right? Because a vehicle can be a weapon;  
16 right?

17 A. We are splitting hairs. A vehicle can be a  
18 weapon. But when asked if you see a weapon in somebody's  
19 possession the inference from that is, in my hand. But,  
20 yes, being behind the wheel of a vehicle you can utilize  
21 that vehicle as a weapon.

22 Q. Just with regard to your report, Mr. -- or  
23 Deputy Forsyth said he did not see -- he saw Rhoades kind  
24 of leaning down but he never saw a gun or any kind of  
25 weapon in his possession; right?

1 A. That's correct.

2 Q. And the fact of whether he saw a gun or not, if  
3 the vehicle was driving at him it wouldn't matter whether  
4 Rhoades had a gun; right?

5 A. If he was using the vehicle as a weapon --

6 Q. Yes.

7 A. -- it would have not.

8 Q. Because if we believe the incident as described  
9 from July 25th, 2017 that was the very same weapon that he  
10 used in that incident for the attempted murder on a police  
11 officer; right?

12 A. No. They were different vehicles.

13 Q. It was a vehicle?

14 A. Oh, I'm sorry, I thought you were saying that he  
15 had used the same car.

16 Q. No. It was the very same weapon. Not the same  
17 vehicle. It was a vehicle that was being used as a  
18 weapon.

19 A. That's what was documented, yes.

20 Q. If you look at, kind of like the last two  
21 paragraphs on page 14. It talks about case documentation  
22 on supporting spinning tires. "The investigator made no  
23 additional investigative efforts to substantiate or  
24 disprove the information." Again, those are things that  
25 you believe that the police officer investigating this

1 should have done or followed up on; right?

2 A. Absolutely.

3 Q. Page 15, I believe, of the report. The last  
4 paragraph, it says, "In this matter the physical evidence  
5 conflicts with the statements made by Deputy Forsyth and  
6 Deputy Love and their statements conflict with one  
7 another. Therefore it's clear that Deputy David Forsyth's  
8 application of deadly force was not objectively  
9 reasonable. May be described as unauthorized and  
10 excessive." Did I read that correctly?

11 A. You did.

12 Q. Is it your testimony that there is a conflict  
13 between statements that deadly force can never be  
14 objectively reasonable?

15 A. Nope.

16 Q. Again here, you talk about conflicts with  
17 statements between Forsyth and Love but you don't talk  
18 about conflicts between their own statements, is there a  
19 reason?

20 A. Just, I was being brief.

21 Q. In this whole discussion that we've talked  
22 about, the actions that occurred at this gas well site,  
23 again, you never once mentioned any discussion about the  
24 dangerous nature of the pursuit that Rhoades led the  
25 police officers on the week prior, right? We have -- and



1 I mean you can look at your report. I will tell you there  
2 is no discussion about that in there.

3 A. I don't have to look. I know there isn't.

4 Q. It never mentions that there were actually any  
5 drugs found in Mr. Rhoades system, does it? Because you  
6 weren't aware of that at the time were you?

7 A. No.

8 Q. You don't mention the criminal history of  
9 Mr. Rhoades; right?

10 A. No.

11 Q. Never mentions about the jeep being stolen or  
12 anything like that; right?

13 A. Correct.

14 Q. Fair to say if this case goes to trial you want  
15 to come in and tell the finder of fact that Deputy  
16 Forsyth's actions were not objectively reasonable and his  
17 use of force was excessive and unauthorized; right?

18 A. My opinion is that his use of force was not  
19 objectively reasonable.

20 Q. And that is what you want to come in and tell  
21 the finder of fact if the case proceeds to trial?

22 A. That opinion, yes.

23 Q. But in all your years as a law enforcement  
24 officer you were never placed in the same situation that  
25 Deputy Forsyth was, were you?

1           A.    I have been in life and death situations, yes.  
2   And I have the scars to prove it.

3           Q.    Were you in a situation where you were forced to  
4   fire your weapon at suspect?

5           A.    I have never placed myself directly in front of  
6   a motor vehicle. And I've been blessed enough that the  
7   threatened use of deadly force was enough to dissuade the  
8   individual from continuing their actions.

9           Q.    In fact you told us that you never had to fire  
10   your weapon other than to put down a wounded animal;  
11   correct?

12          A.    That is correct.

13          Q.    We talked about a number of factors that you  
14   agree that you would consider with respect to what is and  
15   is not considered a threat when you were making the  
16   evaluation of the use of deadly force. And we talked  
17   about that the positions of the officer, the distance of  
18   the officer from the threat, whether the threat's armed,  
19   the demeanor of the suspect, et cetera. You remember all  
20   those we talked about?

21          A.    Yes.

22          Q.    Your report doesn't contain any analysis  
23   specifically of those facts -- those factors, is there a  
24   reason why?

25          A.    I guess I presume them to be the basic elements

1 of every force decision.

2 Q. Other than mentioning the outstanding warrant  
3 for the July 25th, 2017 incident. Your report doesn't  
4 provide any discussion of that prior pursuit or in  
5 incident involving Deputy Love at all, does it?

6 A. The pursuit was not included because it is not  
7 relevant to this particular incident. And the information  
8 on Deputy Love, no.

9 Q. Can you tell me, with regard to the opinion  
10 number one that we talked about, what principles or  
11 methodologies you've used to rely upon and formulate the  
12 opinion number one.

13 A. Outside of my, almost three decades of law  
14 enforcement experience, teaching law enforcement tactics  
15 and weapon systems to professionals from across the United  
16 States, also considering the laws that govern the actions  
17 of law enforcement and what guide the decision making  
18 process in the use of force event, I apply all of that to  
19 forming this opinion from *Graham v. Connor*, primarily,  
20 *Tennessee v. Garner* decision, the experience that I've had  
21 training law enforcement and knowing tactics that are  
22 recognized nation wide, I have got certifications in  
23 teaching these tactics, techniques, interpretation traffic  
24 stops, dynamic events and so forth. And I bring all that  
25 and I form my opinion in this particular matter based on

1 all of that.

2 Q. You saw in Mr. Faulkner's initial report where  
3 over the past 30 years he's conducted a series of national  
4 research projects that involved law enforcement,  
5 corrections officers, and civilians with the purpose to  
6 consider what a reasonable response to certain types of  
7 resistance and aggression would be; right? You saw that?

8 A. I saw his CV, yes.

9 Q. Have you ever conducted any type of research  
10 projects like that to determine what a reasonable response  
11 would be to a particular situation?

12 A. No. I can't say that I've done that kind of  
13 project. I've been more the teacher and the experienced  
14 operator.

15 Q. Are you familiar with Mr. Faulkner at all?

16 A. No.

17 Q. Never heard of him prior to this case?

18 A. Never.

19 Q. Did you do any independent research on him after  
20 you learned that he was the expert in this case?

21 A. No.

22 Q. You didn't conduct any kind of tests or anything  
23 with regard to the reasonableness or lack of  
24 reasonableness of Deputy Forsyth's response?

25 A. There are no such tests to be conducted.

1 Q. Is there any peer review literature that you  
2 relied upon?

3 A. As far as conducting traffic stops? I mean, the  
4 only thing that is Peer -- I guess --

5 Q. With regard to the use of force.

6 A. Let's see, the national guidelines, I guess  
7 should be peer reviewed. I am not -- I guess --

8 Q. What national guidelines?

9 A. Well, there is national guidelines for law  
10 enforcement that you can get through the Department of  
11 Justice, the NIJ. You can look at studies that have been  
12 conducted by various entities associated with force.  
13 Nobody actually has, that I am aware of, peer review --  
14 I'm trying to -- peer review just means was it published  
15 in like police magazine where it was read by other people?  
16 Is that what peer review is?

17 Q. Well, it's reviewed by others and approved by  
18 others in your field.

19 A. Oh, I don't know of anything that exists like  
20 that outside of the academic levels just doing research  
21 that feeds the rest of us.

22 Q. You have not, in your years, have not been  
23 involved in any kind of research study like Mr. Faulkner  
24 was to question law enforcement corrections and citizens,  
25 present them with specific scenario and determine what a

1 reasonable response would be, you've not done anything  
2 like that in your years; is that right?

3 A. No.

4 Q. I wanted to talk about then, the opinion number  
5 two. It starts on page 16.

6 THE WITNESS: Can we do something about the  
7 temperature, because it's getting ridiculous.

8 MRS. DURST: Can we take a break and see if  
9 we can.

10 (Off the record)(3:01 p.m.)

11 (Back on the record)(3:04 p.m.)

12 BY MRS. DURST:

13 Q. I wanted to talk with you then about the second  
14 opinion in your report, Mr. Root. That is, I think it's  
15 like 16 and 17, primarily, of your report. And it's about  
16 the tactics used to execute a felony traffic stop or poor  
17 -- or did not meet accepted standards for officer safety  
18 and directly contributed to the unreasonable application  
19 of deadly force.

20 What I wanted to ask you about first is, did you --  
21 you've reviewed Mr. Faulkner's report with regard to the  
22 STOPS training?

23 A. Yes.

24 Q. Do you agree that a felony traffic stop requires  
25 at least two law enforcement officers operating two

1 separate vehicles?

2 A. I do not.

3 Q. You do not agree with that, why not?

4 A. Requires multiple officers. Two vehicles is  
5 ideal but as long as you have at least two officers it can  
6 be conducted. It would preferably be two vehicle because  
7 you could create channels to funnel people through and so  
8 forth. But you need a minimum of two officers. Not  
9 necessarily two vehicles.

10 Q. So you disagree then with Mr. Faulkner's  
11 statement that a felony traffic requires at least two  
12 officers operating two separate vehicles?

13 A. Yes. I disagree with that.

14 Q. Before the inclusion of this STOPS training,  
15 which is Strategies and Tactics Of Patrol Stops included  
16 with his expert opinion, were you familiar with that?

17 A. I had never seen that ever.

18 Q. Are you aware that the test in training for that  
19 program has been used nationwide by local, state and  
20 federal law enforcement agencies?

21 A. I read that in his. I haven't seen what agency.  
22 I did attempt to find that material. I did learn about, I  
23 think, it was Magnuson, or something like that. And  
24 tragically he died in 2006.

25 Q. Bob Magnuson.

1           A.     Yes. I tried to locate it. Any entity that was  
2     using it or anything. And it is not in print. There is  
3     no resource outside of what he wrote in his report. I  
4     couldn't find a reference. It has been included, for  
5     example, I do a lot of reading from law enforcement  
6     periodicals, like PoliceOne and Police Alert (Phonetic)  
7     and things like that. And I have seen that referenced.  
8     As a matter of fact one of the articles I saw was not  
9     shooting at cars. And they referenced that material in it  
10    because conducting a traffic stop is pretty much the same  
11    across the country on how it's performed. There are  
12    variations and there are policy influences, significant  
13    policy influences. But I couldn't, and the reason I say  
14    this I just want you to know, I tried to find that  
15    material because I wanted to read the whole text around  
16    what he was writing, or including, excuse me.

17           Q.     Prior to receipt of his report, you were not  
18    familiar with that particular training?

19           A.     Not particularly that particular text. The  
20    training is the same--

21           Q.     The STOPS --

22           A.     Yes, that text. The training he articulated is  
23    not different from the training that's being facilitated  
24    across the country.

25           Q.     Do you agree that Mr. Rhoades was wanted on



1 felony charges at the time of August the 2nd?

2 A. Yes.

3 Q. Do you agree that Mr. Rhoades committed  
4 additional multiple felonies in the presence of the  
5 deputies that were responding to the chase? I.e. Deputy  
6 Forsyth and Love?

7 A. If I consider only Deputy Forsyth's version and  
8 absent everything else. I don't know if fleeing and  
9 alluding is a felony in West Virginia.

10 Q. Regardless of whether he committed an additional  
11 felony in the presence of Forsyth and Love, would you  
12 agree that Rhoades on August the 2nd could have  
13 been -- could be considered a fleeing felon because he had  
14 the felony charges pending against him from the prior  
15 incident?

16 A. Absolutely.

17 Q. Do you agree that the reasonableness of a  
18 particular use of force must be judged from the  
19 perspective of a reasonable officer on the scene rather  
20 than the 20/20 vision or hindsight?

21 A. Yes, I do.

22 Q. Would you agree that the situation that Deputy  
23 Forsyth and Love were actually facing on August the 2nd  
24 was making a high risk stop of an individual who had  
25 committed numerous felonies as opposed to a felony traffic

1 stop?

2 A. Could you say that one more time, please?

3 Q. Sure.

4 A. Thank you.

5 Q. Would you agree that the situation that Deputies  
6 Forsyth and Love actually were facing on August the 2nd  
7 was making a high risk stop of an individual who had  
8 committed numerous felonies as opposed to a felony traffic  
9 stop?

10 MR. EDWARDS: Object to from.

11 A. I think the concept of felony traffic stop  
12 includes the idea that you're stopping somebody with  
13 felonies. It was not a classic vehicle stop. As far as  
14 like, you know, with vehicle positioning and trying to  
15 initiate the stop, determining where the stop should be,  
16 having multiple vehicles present, forming your vehicles  
17 and angles and stuff like that. This should have been a  
18 high risk stop conducted in felony stop fashion. There is  
19 a very -- the distinction of saying they're just stopping  
20 a high risk felon and not conducting a felony stop.  
21 That's playing semantics.

22 Q. Well, is there -- is there a difference? If  
23 there is not a difference, why would you use high risk  
24 traffic stop versus a felony traffic stop? Why is there a  
25 distinction?

1 A. There isn't.

2 Q. So you could believe that those descriptive  
3 terms are the same?

4 A. Across this country, originally they were called  
5 felony stops. The problem with that was people would take  
6 things to court and it wasn't a felony. They were doing  
7 something that was inappropriate because they weren't  
8 stopping a felon. It was a high risk event. Felony stop  
9 got pushed to the side and we now have unknown risk  
10 traffic stops and high risk traffic stops. Which is why I  
11 was very clear in my report in articulating, high risk --  
12 a felony stop is a high risk traffic stop. And whoever  
13 might try to say well, they're very different, needs to  
14 catch up in time. Because they haven't been different for  
15 decades.

16 Q. Well, in your opinion number 2 the actual  
17 substance of the opinion is, the tactics used by Deputy  
18 Forsyth executed and you have "felony traffic stop" it  
19 doesn't say high risk traffic stop. Is there a reason  
20 that you used the term felony traffic stop in the Opinion  
21 2?

22 A. That's what they used in their report. Which is  
23 why I surrounded it with quotes.

24 Q. Would you agree that Mr. Rhoades made it  
25 impossible to execute a felony stop because he did not

1 relinquish control of the vehicle or follow commands of  
2 the law enforcement officers?

3 A. No.

4 Q. Why not?

5 A. Because they didn't initiate a high risk stop.  
6 They made -- he made no effort to utilize his vehicle in  
7 any form or fashion for cover concealment. Even when you  
8 look at the STOPS material that was provided by  
9 Mr. Faulkner. Using the vehicle, not exposing yourself.  
10 Those things -- the misapplication of -- well, the first  
11 one to have their feet on the ground -- that's just a  
12 misapplication of what was meant. The meant behind that  
13 text and when you look at it nationwide is, when you are  
14 dealing with a suspect that you have actually stopped in a  
15 high risk stop, you don't want to be trapped inside the  
16 vehicle. You want to be outside the vehicle in a covered  
17 position behind the door at least giving commands. So  
18 just getting your feet onto the ground isn't the goal.  
19 Cause that means that I can just run out and run in front  
20 of a vehicle. That's not what that man -- no one should  
21 interpret the safety tactics deployed by law enforcement  
22 to be the first one out of the car wins. That's not what  
23 was meant by that. So in this particular issue, I don't  
24 agree.

25 Q. You have no information to dispute that Mr.

1 Rhoades was given commands to exit the vehicle, and  
2 according to Forsyth and Love he did not follow those  
3 commands?

4 A. Correct. But you asked me about the felony  
5 stop. They didn't conduct a felony stop. He got out in  
6 front of a vehicle, pointed a gun at it, and was calling  
7 for stuff. He may have issued commands. He may not.  
8 There are statements that indicate that they have -- that  
9 he did issue commands. But they were not conducting a  
10 traffic stop. Even a high risk stop, an unknown risk  
11 stop, they were not.

12 Q. Because of the fact that you said they didn't  
13 use the vehicle, they didn't position the vehicle, he got  
14 out and placed his self in front of the vehicle, is that  
15 why?

16 A. They may -- well, if you're going to say, as  
17 a professional, that I conducted this kind of stop. Then  
18 it falls in line that you've monitored safety and security  
19 of yourself and your partner to ensure the high  
20 probability of your surviving an event. Not exposing  
21 yourself and then claiming this was that kind of stop. So  
22 I draw distinction between the two it's not the same.  
23 Which is why he exposed himself. He had bad tactics and  
24 he made decisions that directly contributed to this event.

25 Q. In your opinion?

1           A.    Of course. I bet ya as a national look you'll  
2 find that.

3           Q.    Have you done any national look?

4           A.    I've looked at the materials and every guidance  
5 from every -- I'm still waiting on West Virginia. Maybe  
6 West Virginia tells people, jump out and stand there. But  
7 according to the West Virginia Sergeant, according to the  
8 officer that went to after -- when he was deposed, when he  
9 finally went to the academy none of that is even  
10 recommended by West Virginia. So once I have the  
11 materials specific to this matter from West Virginia I can  
12 articulate what he was trained in. But based on the  
13 information in this case, he violated every safety  
14 standard known to law enforcement when it comes to  
15 conducting a stop on somebody who is expected to be a high  
16 risk known felon that's wanted for attempted murder of a  
17 police officer.

18          Q.    And so you assume when he said he was -- that he  
19 had that information, you believe him when he said he knew  
20 that. But you don't believe him when says other things;  
21 is that right?

22          A.    I didn't say I believe him when he said that and  
23 when he said other things. I look at the case  
24 information. And based on fluctuations in statements,  
25 based on changing in statements, I take it at face value

1 and give it the consideration it's due.

2 Q. We talked a little bit -- well, let me ask this.  
3 With regard to Opinion number 2 you talked about trying to  
4 find the full text of the STOPS that Mr. Faulkner  
5 referenced and you've not been able to locate it; is that  
6 right? Or find it so it's available to you?

7 A. That is correct.

8 Q. There's no other reference material referred to  
9 for Opinion number 2 and the basis for it. Is that one of  
10 those things that we talked about early on, that you refer  
11 to things to formulate this opinion you just didn't  
12 include reference to it in this report?

13 A. I didn't include it. It's my background  
14 training and experience teaching these things to law  
15 enforcement across this -- I mean, I've taught everybody  
16 from California to Florida. And conducting traffic stops,  
17 high risk encounters, dynamic encounters and this  
18 information comes from all of that experience. And I  
19 didn't print out one of the hundreds, if not thousands, of  
20 articles for law enforcement that's been presented and I  
21 would prefer to use the information directly from the West  
22 Virginia State Police because I have no doubt that the  
23 information I'm relying on through my training experience,  
24 my certifications, that this is accurate and is in  
25 compliance even with what West Virginia does.

1 Q. My question was not what you relied upon based  
2 on your training, education experience my question was,  
3 was there a specific reference material that you  
4 referred to or relied upon to formulate the basis of  
5 Opinion number 2?

6 A. I guess I have to go back --

7 Q. Like a particular manual or something like that,  
8 that you pulled out --

9 A. I relied on my background as an instructor,  
10 going through as a state certified instructor and tactics  
11 and teaching at the academy and teaching the force  
12 considerations and patrol procedures and things like that.  
13 So I would have to -- I know it's in a book. But I did  
14 not cite a book in this.

15 Q. Did you refer to a book for a specific purpose  
16 of formulating this opinion, is my question. Not did you  
17 read it in a book at some point in time during the years  
18 of training that you provided. My question is did you  
19 refer to any book before you prepared this opinion?

20 A. I have referenced material. To be honest with  
21 you I cannot recall. I drew this out of background  
22 training in experience that comes from the manuals that  
23 are cited. I didn't cite the manual or book or articles  
24 because it's -- outside of academy training, which I've  
25 requested the training documentation not only from the



1 sheriff's office but also from the state. And no training  
2 documentation has been provided. Absent that you have to  
3 go through national standards of things that are accepted  
4 across the country. And nobody has created a manual  
5 that's just specifically traffic stops across the country  
6 so you have to derive your information from what you've  
7 done, the courses that you take, the certifications you  
8 pursue. That is where I derived this information from. I  
9 would really love the opportunity to review the material  
10 requested from both the sheriff's office about how they  
11 teach their people to do it. As well as the standards for  
12 the state of West Virginia. But as of right now, this  
13 opinion is based on my background training and experience,  
14 the certifications that I hold the, courses that I have  
15 taken and the manuals that came along with those.

16 Q. And my question -- and I'm not trying to be  
17 difficult, Mr. Root. And you can answer the question  
18 however you want. I need an answer to my question, and  
19 it's specific. When you sat down to prepare Opinion  
20 number 2 did you say, oh, let me look at that manual that  
21 I used for this? Let me look at that handbook that I got  
22 from this. That's what I'm wanting to know. Did  
23 you pull out something to refer to as you're preparing  
24 this opinion? That's my question.

25 A. I did not pull out a book on that opinion. No.

1 Q. Okay. And then we've kind of touched upon  
2 Opinions number 2, 3, excuse me, and number 4 about the  
3 training records. And you've kind of provided that and  
4 said that you've requested to review and consider training  
5 records; right?

6 A. That is correct.

7 Q. You've told me, I think, earlier if -- well let  
8 me ask this if you believe that this was not a felony  
9 traffic stop, why do you want training records with regard  
10 to the training for felony traffic stops?

11 A. First and foremost is, does the agency provide  
12 training to the personnel to help educate them and make  
13 them prepared for the job that they have to do. They're  
14 saying it's a traffic stop. I don't know of a single  
15 agency that would agree. So in an effort to be thorough  
16 and to get information to say whether somebody was or was  
17 not trained to do it this way, I requested the training  
18 documentation.

19 Absent that, all I got was some generalized -- I got  
20 personnel files and generalized training things. None of  
21 which addressed traffic stops. None of which addressed  
22 the use of force. There is nothing that I was provided to  
23 show the agency in any way, as an agency, not outside  
24 training resources that may or may not teach things the  
25 agency will accept, the agency in any way has provided

1 training on the topic or material regarding traffic stops,  
2 high risk stops, pursuits. There was nothing. Absent  
3 that I have -- if there is no training, knowing that these  
4 are high risk environments, this is high risk events and  
5 that this is something that not only cost lives but the  
6 bean counters know it cost large sums of money to people,  
7 you have to train on this. People have to be prepared.  
8 That's why I'm requesting the training documentation.

9 Q. And again, you don't know what training they did  
10 or did not receive at the academy because you don't have  
11 those documents; right?

12 A. That is absolutely correct.

13 Q. When did you make that request to counsel for  
14 the state police documents?

15 A. The first request. I'd have to look back in the  
16 e-mails. That was a while ago. And then recently  
17 as we got through more of the material and everything in  
18 recent interviews pointed back to West Virginia, I made  
19 the request again saying, can we get it. Cause now it's  
20 like the agency's not involved in training. It's all  
21 going to go back to West Virginia. Which is just mind  
22 boggling. But if that's what it is then obviously we need  
23 to know what West Virginia said.

24 Q. What have you been told about the status of the  
25 request for those documents to the state police?

1           A.    It's been submitted.

2           Q.    Do you know when the request was made?

3           A.    That I don't know. Counsel said it was  
4 submitted, it was submitted.

5           Q.    Is there anything in your review -- well, let me  
6 ask this. This is a use of force case; correct?

7           A.    Yes.

8           Q.    And tell me why your report contains absolutely  
9 no discussion whatsoever with regard to the Marion County  
10 Sheriff's department's use of force policy?

11          A.    Well I guess it's primarily because the force  
12 policy articulates very clearly what every force policy  
13 does and the statements that were made by Deputy Forsyth  
14 don't deviate from the policy in anyway.

15          Q.    So is the reason you did not refer to the use of  
16 force policy is because Deputy Forsyth was actually in  
17 compliance with that policy on August the 2nd?

18          A.    No. That should never be interpreted from what  
19 I just said. I'm saying his statements were. Absent  
20 additional information, one, knowing if he was ever  
21 trained on the policy but if -- there is no investigative  
22 effort to verify the information to substantiate the  
23 statements which goes back to my original opinion. So the  
24 policy is articulated like every policy is. If you look  
25 at the IACP models and things like that. That reminds me,

1 traffic stops, I looked at IACP's model for conducting  
2 traffic stops.

3 Q. That's the International Association of --

4 A. Chiefs of Police.

5 Q. Chief of Police.

6 A. And I believe that copy is on that disc. Cause  
7 what I looked at the was other model things to look at and  
8 apparently I failed to include them here, but --

9 Q. And I guess what I'm still trying to figure out  
10 is, you said that Deputy Forsyth, your opinion is that,  
11 his use of force -- use of deadly force was not  
12 objectively reasonable; right?

13 A. That is correct.

14 Q. And the Marion County Sheriff's Department  
15 did in fact have a use of force policy in place. But no  
16 where in your report do you discuss when under that policy  
17 the use of force -- use of deadly force is or isn't  
18 permitted. And no where in your report do you say, oh  
19 well, since my opinion is that his use of deadly  
20 force was not objectively reasonable, did he violate the  
21 Marion County Sheriff's department use of force policy;  
22 why not?

23 A. I didn't say he violated the policy.

24 Q. Do you believe that he was in compliance with  
25 the policy?

1           A.    If I don't believe that it was objectively  
2   reasonable, then it comes down to, was he taught. Did he  
3   do what was expected. Was he actually provided with the  
4   policy. Did he sign off -- I have no answers to that  
5   because none of their personnel information has that. So  
6   in looking at it I submitted the opinions based off the  
7   information that I have. I have provided my opinions.

8           Q.    And you see now in Deputy Forsyth's transcript  
9   that he was in fact provided the use of force policy and  
10   was trained on it; right?

11          A.    I see that he has said that in his deposition,  
12   just like I saw that Deputy Love said he was trained on it  
13   and everything else. But it's interesting because even  
14   with Deputy Love, for example, because he's the newest  
15   hire, he said that as part of the FTO (Phonetic) program  
16   and there was a packet and things he had to sign. Haven't  
17   seen those either. Which would substantiate education.  
18   But none of that has been provided.

19          Q.    You have had the opportunity to review --  
20   initially you had reviewed Mr. Faulkner's report that was  
21   from July 1 or somewhere around in there. And I know you  
22   just recently saw his supplemental report. What, with  
23   regard to the initial report, what specific criticism or  
24   criticisms do you have of the opinion set forth by  
25   Mr. Faulkner in his initial report?

1           A.    I just want to remind myself what his opinions  
2   were so I can speak to them directly.

3           His first Opinion is, "Deputy Forsyth did his duty and  
4   placed himself in harms way when he responded to a high  
5   risk pursuit of a dangerous felon."

6           The articulation that he had, felon, warrants. I have  
7   no disagreement with that. The primary thing is just, and  
8   most of the things that come with it, are his application  
9   of perception or perspective. But the fact that he's  
10   showing that it was a high risk stop not a high risk  
11   traffic stop, or it was a -- no, I'm sorry. It was a stop  
12   of a high risk felon. Not a high risk stop. That's -- I  
13   don't agree with that. Because that's just somebody  
14   splitting hairs to try to separate reality from a  
15   perspective. You know, as far as when he cites a study, I  
16   have zero issue. I really appreciated him citing all the  
17   For Science stuff. Even though he doesn't necessarily  
18   apply it in its totality to everybody, he applies it in  
19   pieces that benefit the narrative that he's put forth.

20          Q.    Other than your attempt to locate the full text  
21   of the STOPS training did you review any on the other  
22   material that he cited, reference material in either one  
23   of his reports?

24          A.    Everything that I could get my hands on.  
25   Luckily, for example, he cited that he provided the

1 studies for the casing ejecting thing. He did not. He  
2 cited them. But he didn't provide either of them. But  
3 they are available somewhere on the internet. When you  
4 find them on the internet you can't actually get a  
5 downloadable thing. It's very difficult to get that. So  
6 I provided a copy of the actual cite that was done and  
7 published.

8 Q. That's the one on the flash drive?

9 A. That's on there also. Yes, ma'am.

10 And when he spoke about the eye and it's ability, he  
11 said two degrees. We were trained it's up to a maximum of  
12 three degrees of focus that everything else peripheral.  
13 He applied that to how Deputy Forsyth wasn't aware of what  
14 was going on around him. Which is absolutely correct.  
15 But he failed to take into consideration how that would  
16 also effect and impact Deputy Love and how that  
17 transition, the fact that -- I believe it was you that  
18 pointed out in deposition how high the vehicle was. And  
19 the fact that when Deputy Love was transitioning forward,  
20 moving forward and trying to look over in the direction of  
21 the jeep and he only caught the rear end of it, that his  
22 perception was the jeep was moving. But it's also  
23 possible, based on his field of focus, the movement and  
24 everything going on around him, the vehicle that he is  
25 trying up with moving could have looked like the jeep was



1 moving. It's kind of like when you are sitting at a  
2 traffic light and a car next to you suddenly starts to  
3 roll back. People will push harder on the break thinking  
4 they are moving. They are not moving. Something else is.  
5 So I am a firm believer that when I apply research and  
6 information, I apply it to everybody in the equation. I  
7 don't just apply it to a piece.

8 Q. You believe Mr. Faulkner only applied it to a  
9 piece?

10 A. No. I believe that Mr. Faulkner looked at an  
11 event from the perspective that he wanted to see it from,  
12 which was, Deputy Forsyth. And then he applied pieces --  
13 he took out -- I mean, it sounds great. You know, you  
14 cite -- you pull the studies. But let's talk about the  
15 studies in their entirety. The fact that, when he cites  
16 in his report that, you know, the casings won't mean  
17 anything. Well, the reality is, the casings alone don't  
18 mean anything. But the casings have value. There is  
19 investigative value in the casings. But you would need to  
20 know more information. So when he cited that, you know,  
21 his position, his hands position and all, he started  
22 articulating the things that are in the study that --  
23 going to actually forming the study's outcome. There is a  
24 complete ignoring of the fact that none of that  
25 information was even sought during the investigation.

1 Q. One of the things that you just said was, when I  
2 asked you, you said he wanted to look at the information  
3 from the perspective of Deputy Forsyth. Isn't that the  
4 way you are supposed to do it under *Graham v. Connor* and  
5 *Tennessee v. Garner*?

6 A. Yes. But you -- if you are going to site other  
7 people's information as being why that information is  
8 accurate, you still have to look at it from their  
9 perspective as well. You have to look at it from the  
10 perspective of the person who is being shot. What do you  
11 know about them. How do you get in their -- we can't get  
12 inside his head. He's dead. There is no way to get  
13 information. But we can get information from Deputy  
14 Forsyth and from Deputy Love. They were there. But if we  
15 are going to apply studies, we apply them to everybody  
16 equally to see how that impacts the information that's  
17 being provided to us in an event.

18 Q. Your testimony is, he only applied the studies  
19 to Deputy Forsyth?

20 A. I am saying that the information he provided in  
21 his report cites the study accurately, but it doesn't  
22 appear to apply the same information across the board.  
23 When you are looking at a use of force event -- let me  
24 rephrase that. When I look at a use of force event, I  
25 look at it -- I have a problem with the fact that the jeep

1 doesn't appear to have moved. According to statements  
2 from Deputy Love, according to its position and what we  
3 see as far as ground disturbance and everything else. But  
4 then I have a Deputy that is saying, I saw the vehicle --  
5 but I only saw half of the vehicle and it was moving. Is  
6 it possible he saw that. Well, it's possible. But it's  
7 also possible, given his transitions and movements that it  
8 appeared to be moving because of his field of focus and  
9 what was going on next to him. That's a possibility. So  
10 then you look at the physical -- so it's a matter of  
11 taking these studies and applying them in a way that, if  
12 there is a 50/50 nobody knows for sure what's going on,  
13 credit will always go to law enforcement. Because it's  
14 certain. It's tense. A rapidly evolving events. But  
15 when it comes to looking at the studies, it's also  
16 applying it to everybody across the board and using them  
17 in that way. The case study that he did on the casings.  
18 It's not inaccurate, but there is more to it. There is  
19 more information. And that goes to what I was saying is,  
20 you have an individual that is saying the casings won't  
21 mean anything. You're right. Since you never concerned  
22 yourself with any of the information that should have been  
23 inquired about the shooting in and of itself, these do not  
24 mean anything by themselves. He is a 100 percent right on  
25 that. I don't know the man from Adam. He is very

1 articulate and he cited studies, you know. And all I'm  
2 doing is going in and saying okay, yep, based on that  
3 study. But however, there is more to it than just that.

4 Q. You cited absolutely study in your report;  
5 right?

6 A. It's an error that I made. Yes, ma'am. But not  
7 one that I can't produce.

8 Oh, you wanted to go back to his Opinions.

9 Q. Yeah.

10 A. I'm sorry, I told you, very long winded.

11 (Witness reading Opinions softly to himself)

12 Second Opinion, "David Forsyth's response placing  
13 members of the general public at risk of serious bodily  
14 harm or death. After attempting to run over a deputy he  
15 complied with guidelines and national law enforcement  
16 practices."

17 That's ignoring the variable that it requires the  
18 pursuit. And law enforcement is in pursuit and he drives  
19 bad. Again, when I got this, the reason I didn't do a  
20 supplemental report to it was, it was just -- these are  
21 his opinions.

22 "Deputy Forsyth's response was in compliance with his  
23 training and his department policy." I don't know how he  
24 got that one. Unless somehow he was provided with training  
25 documentation I never received. How did you get that he's

1 in compliance with his training. I do have an issue with  
2 that. Because -- you're telling me, okay, department  
3 policy and training -- I don't even know if he was trained  
4 on the policy. I haven't seen any training to show that  
5 he was even taught this. And did you get the West  
6 Virginia State Police, cause I haven't gotten that yet.  
7 So that opinion I -- I -- I take odd with.

8 (Witness reading opinions softly to himself)

9 The first aide things and after that -- no issue with  
10 that at all.

11 "The investigation of this incident by the Marion  
12 County Sheriff's Department followed national law  
13 enforcement guidelines and practices." Well, and it's on  
14 there too. I've included it. It's reference material,  
15 but it's not in my report but you will see that IACP puts  
16 out a procedure for leadership on how to conduct  
17 investigations. How incisive there is specific  
18 information -- I'm sorry, specific training an  
19 investigator should have. It is a good idea to have an  
20 experienced homicide investigator and a team. But there  
21 is IACP's rules, there is IACP's policy on conducting  
22 force investigations. And I have provided all of that.

23 Q. What page are you referring to of his report  
24 there?

25 A. Oh, what page?

1 Q. Yeah. What page.

2 A. Let me find the --

3 Q. The one where you are talking about the Marion  
4 County Sheriff's Department conducting investigations.  
5 The reason that I'm asking that is, my understanding is,  
6 the Marion County Sheriff's Department did not conduct an  
7 investigation. They referred it to an outside agency for  
8 an investigation.

9 A. "The investigation of this incident by the  
10 Marion County Sheriff's Department followed national law  
11 enforcement --

12 Q. Are you aware of any investigation in any of the  
13 materials you've received by the Marion County Sheriff's  
14 Department?

15 A. Sadly, no. Not even an internal. For either  
16 shooting.

17 Q. So are you aware -- did you review the entirety  
18 of Mr. Faulkner's report where he is talking about, it was  
19 appropriate for the Sheriff's Department to refer to the  
20 State Police for investigation?

21 A. Yes. But if you are going to say their  
22 investigation was -- I don't want to misquote him now.  
23 That's the wrong one. "The investigation of this incident  
24 by the Marion County Sheriff's Department followed  
25 national standard." So if all you are going to say is

1 referring it out is consistent with standards, I have zero  
2 issue with that.

3 Q. Okay.

4 A. Zero issue with that.

5 Q. Okay.

6 A. It is always best, and my recommendation to  
7 anybody I have ever taught when it comes to force  
8 investigations, another agency should conduct the  
9 investigation. For transparency. Hopefully, to reduce  
10 the possibility of good 'ol boy networks. For lack of --  
11 I don't know the politically correct way to put that. But  
12 that would be -- so that's the other thing, is they didn't  
13 do an investigation. They didn't do an internal that I'm  
14 aware of. Never seen anything on it. For either -- as a  
15 matter of fact, the shooting incident that led to the  
16 attempted murder charge, there is no use of force report.  
17 There is no documentation of a -- now I did learn in the  
18 most recent Deputy Love deposition that he filled out  
19 paperwork. Okay. I have not seen any of that. That was  
20 the first report.

21 Q. Okay.

22 A. Well, sorry. These are a lot of studies. Let  
23 me jump past that.

24 His second report's opinions -- his first opinion on  
25 the second report I don't have any --

1 Q. What was that?

2 A. That was the one about Corporal McDougal did not  
3 make an appropriate statement to -- that had nothing to do  
4 with force. Maybe he was retained for other things. I  
5 don't know.

6 "The additional .40 caliber spent casings were located  
7 at the scene. Mr. Rhoades was shot. No additional  
8 information. And do not in any way alter the conclusion  
9 of the police investigation." I think we've covered that.  
10 I don't have to redo that one.

11 His third one, "Sending Deputy Forsyth, Deputy Love to  
12 the hospital for evaluation after the shooting and not  
13 immediately interviewing the deputies is consistent with  
14 best practices." Zero issue with that at all.

15 He cited the wrong pages in his report. "There is  
16 nothing unusual or suspect about Deputy Forsyth and Deputy  
17 Love recollection not being identical." The only thing  
18 that I have, even on his first report and his second one,  
19 I am not seeking identical statements. I know he stated  
20 in here that I was critical of the deviation -- I expect  
21 deviations. It's deviations that are not supported by  
22 physical evidence. The deviations from each other's  
23 statements and then those deviate from physical evidence.  
24 That I have an issue with. The fact that two people have  
25 different perspectives and have different observations, I



1 don't have an issue with that at all. It's the totality  
2 of everything.

3 And that was his last -- oh, and then I starred his  
4 hypothetical. It wasn't listed as a hypothetical. But he  
5 presented one in his report.

6 Q. Why did you star that?

7 A. Because I think it's ridiculous. I think that  
8 somebody -- let me rephrase that. I think that it's  
9 something where you're not taking into consideration how  
10 an event actually happens. But when you look at it in  
11 little pictures, well, I can imagine that he was in the  
12 middle of shifting gears and the shooting took place right  
13 at this -- just happened to be right at that second, so he  
14 fell off and the vehicle automatically stopped. It was  
15 accelerating. There was no break application. What was  
16 the catalyst for it going from moving rapidly to suddenly  
17 stopping. We are going to say, because it was out of gear  
18 at the time of the shooting.

19 Plus, it doesn't take into consideration with, what was  
20 the actual damage done to Mr. Rhoades by the bullet that  
21 caused a half inch laceration to his spinal cord at C1.  
22 Not to mention fracturing the spinal -- fracturing C1 and  
23 also causing trauma to under lobe of the brain. Was he  
24 conscious. Was he already dead. That's medical -- that's  
25 outside -- but as an investigator and as a force person

1 who looks at it, those are things that we are taught, you  
2 have to -- when you look at an event, you have to look at  
3 all of these pieces. So that's why I had starred that. I  
4 just -- I think it's reaching to say that he was in the  
5 middle of shifting gears that -- in 20 feet he got it up  
6 so fast that he was able to go into second gear. And  
7 there's not significant ground disturbance that would be  
8 supportive of it.

9 I know that you mentioned the picture, and I will be  
10 looking for that.

11 Q. Do you believe that in order to be able to shift  
12 from first to second gear you have to be going 20 miles an  
13 hour?

14 A. No. But you do have to have your engine to a  
15 specific RPM and movement. Otherwise when you drop into  
16 second, if you are not moving fast enough and all you have  
17 is RPMs, you will stall out.

18 Q. I have a standard, so I know.

19 A. Okay. So you know first hand.

20 Q. I know how to drive one.

21 A. Yeah. Okay. So to look at it -- you know,  
22 again, so you bring a perspective cause you have an  
23 experience in a standard transmission. Okay, then I have  
24 -- I mean, I wanted to drive in a semi, that's when I was  
25 a little kid, my first driving lesson was in, literally a

1 tractor trailer without the trailer. So my experience  
2 with standard transmissions -- my whole life. When you  
3 read something like that -- I starred it just because it  
4 didn't make sense.

5 Q. But it is something that is a possibility that  
6 could have occurred.

7 A. It is somebody who is identifying a possibility.  
8 Ignoring physical evidence, ignoring everything else, but  
9 raising a possibility that this could have been done. I  
10 can raise a lot of possibilities. But I should hope that  
11 the possibilities are supported by other evidence or  
12 testimony.

13 Q. And the physical evidence you are saying was  
14 ignored was this ground disturbance that -- the lack of  
15 ground disturbance you say you didn't see?

16 A. The vehicle location. The deviation --  
17 everything that I've discussed here with you today. Not  
18 just lack of ground disturbance, but distance. You know,  
19 looking at how far the vehicle could have traveled. Well,  
20 where is it placed. Is it traveling from this point to  
21 this point -- and people are putting it at very specific  
22 locations, none of that makes -- they don't match up with  
23 anything. And I chose not to ignore things that don't  
24 match up. I want to know why don't they match up.

25 Q. You chose to formulate an opinion that the

1 police officer who shot the decedent of your client used  
2 inappropriate and unreasonable force; fair?

3 A. I don't want to form any opinions. I form  
4 opinions based on the information that is provided to me.

5 Q. Nowhere in your report do you discuss any other  
6 incidents involving any other officer of the Marion County  
7 Sheriff's Department or any other shooting. Did you  
8 review any of those materials?

9 A. I saw materials for the 25th incident, but  
10 I'm --

11 Q. Not involving Mr. Rhoades. Involving  
12 individuals other than Mr. Rhoades.

13 A. Oh, no.

14 Q. You have not formulated any opinions and would  
15 not intend to give any about any other incidents involving  
16 the Sheriff's Department?

17 A. I don't know of any other incidents involving  
18 the Sheriff's Office outside of what was in this case.

19 Q. Okay. Did you -- you said you reviewed the  
20 Complaint; right?

21 A. Yes.

22 Q. Did you see in the Complaint that there are  
23 references to other individuals being shot by members,  
24 allegedly members of the Sheriff's Department?

25 A. I read that in the Complaint. I am looking at

1 this force event.

2 Q. Okay. So you, if this case proceeds to trial,  
3 you will not be giving any opinions on any conduct of the  
4 Sheriff's Department in relation to those other incidents?

5 A. No, ma'am. I have not seen a stitch of  
6 information on any of those things. Other -- well, let me  
7 correct myself. Other than the original Complaint, I have  
8 not been asked to look at anything nor have I considered  
9 anything in any other matter.

10 Q. Subject, obviously, to if you issue any  
11 supplemental report, I reserve the right to request to  
12 depose you further only with regard to any supplemental  
13 opinions. And I do also want to make arrangements to get  
14 a copy of what is -- to make it easy, I just want to copy  
15 what is in your binder that is colored so I have what  
16 you've highlighted and what you've starred. Whether it's  
17 in the deposition transcripts or Mr. Faulkner's report.  
18 So I am not sure how we -- if there is like a copy place  
19 that is close to you that you can take it and get it  
20 copied and the, you know, send me the bill or if I -- I  
21 don't know, but I would like --

22 A. I live in Mountain City. I will try to find  
23 something, I mean, there's got to be a Kinko's somewhere  
24 -- Johnson City.

25 Q. Well, that's one of the reasons I want the file.

1 And I appreciate you putting it on the flash drive. But  
2 me looking at the deposition transcript without your  
3 highlighting doesn't tell me what you may have found  
4 pertinent or important as you were reviewing it.

5 A. Sure.

6 Q. So that's why I want the -- the highlighting  
7 documents.

8 A. No problem.

9 Q. And to the extent that you have -- that early in  
10 our discussion where you talked about any materials that  
11 you referred to specifically as you were preparing your  
12 report that are not on the flash drive, I would like  
13 copies of those as well.

14 A. Yes ma'am.

15 MR. EDWARDS: Done?

16 MRS. DURST: Yep.

17 MR. EDWARDS: We will read.

18 (Off the record)(3:46 p.m.)

19 (Read and sign requested)

20 (DEPOSITION CONCLUDED)

CERTIFICATE

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

I, Lisa Shepherd-Hollar, a Notary Public in and for the State of North Carolina, do hereby certify the testimony of Dennis Anthony Root in the above mentioned matter was reported by me and reduced to typewriting under my direction; that the foregoing is a true and correct transcript of the said testimony to the best of my ability and understanding.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have hereto set my hand, this the 30th day of September 30, 2019

*Lisa S. Hollar*

Lisa S. Hollar

Notary: 201532000037

*Rhoades vs County Commission of Marion County, et al.*  
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